

**FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2016**

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**TUESDAY, MAY 12, 2015**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 10:29 a.m., in room SD-138, Dirksen Senate Office Building, Hon. John Boozman (Chairman) presiding.  
Present: Senators Boozman, Moran, Lankford, and Coons.

**FEDERAL COMMUNICATIONS COMMISSION**

**STATEMENT OF HON. TOM WHEELER, CHAIRMAN**

**ACCOMPANIED BY HON. AJIT PAI, REPUBLICAN COMMISSIONER**

**OPENING STATEMENT OF SENATOR JOHN BOOZMAN**

Senator BOOZMAN. Good morning. The subcommittee will come to order.

Today, the subcommittee will consider the fiscal year 2016 budget request for the Federal Communications Commission (FCC). I would like to welcome our witnesses, FCC Chairman Tom Wheeler and Commissioner Ajit Pai. We look forward to hearing from both of you about the details of the FCC's budget request and the work that you are now doing to carry out the agency's core mission.

As we consider your request for the next fiscal year, we are mindful of the ongoing need to clear the way for economic opportunity and for international competitiveness. The FCC plays an important role in ensuring that the United States continues to lead the world in innovation and communication.

However, I fear this leading role is slipping. Under a previous chairman, the agency released a book highlighting the critical importance of regulatory independence and transparency in the success of the telecom sector. According to the book, "If the regulator is tied closely to the incumbent government, changes in government can introduce an element of uncertainty which heightens investment risk, and can serve potentially to deter future investment."

Unfortunately, the lessons of yesterday may have been lost on today's decision-makers. With the FCC's embrace of the President's plan for Internet regulation, the Commission moved farther and farther away from the independence, transparency, and regulatory certainty our Nation deserves.

The FCC's policies and actions have an enormous impact on our country's economic growth and potential. I am interested to hear more about the Commission's other efforts to promote economic growth, reduce regulatory burdens, and increase transparency, predictability, and accountability in the regulatory process.

As members of this subcommittee, we have a tremendous responsibility to ensure the funds we oversee are spent wisely. Under the Budget Control Act and the budget resolution, the discretionary spending cap for fiscal year 2016 limits nondefense spending to \$493 billion. This represents an increase of just \$1.1 billion over the fiscal year 2015 level for all nondefense departments and agencies.

While the FCC's funding is offset by fees, that does not in any way minimize our duty to ensure that the agency is operating effectively and the funds are being spent responsibly.

This year, the FCC is requesting an increase of \$73 million, 21 percent more than it received in fiscal year 2015. In a disappointing move, the FCC's budget proposes to paper over part of that increase by transferring \$25 million from the Universal Service Fund to augment the FCC's operating budget.

The Universal Service Fund is intended to help ensure that all Americans have access to telecommunications services. It is not intended to be a reserve fund to pay for the FCC's operating expenses.

Many people in Arkansas think the FCC has forgotten about rural America. Transferring money away from broadband deployment to offset agency spending in DC aggravates that all-too-real perception.

All agencies have to make strategic decisions on how to best allocate resources. Spending on staffing levels, contractors, space and equipment needs, and technology must all be appropriately balanced in order for agencies to effectively carry out their core statutory mission and functions.

As we have seen too often, access to more funding does not necessarily ensure that an agency will successfully achieve its mission or spend that funding wisely.

Finally, as we review your budget request, I am interested to hear what decisions you have made to operate more efficiently in order to carry out your responsibilities within current funding levels and would appreciate more specific information regarding the costs of the FCC's projected move of its headquarters.

The American people want a government that works for them, not against them. They want us to curb wasteful spending; make the Government more efficient, effective, and accountable; and pursue policies that create economic opportunities for everyone.

These are the priorities of the American people. They will be reflected in the critical oversight we conduct, as we consider the fiscal year 2016 budget requests for all of the agencies within our jurisdiction.

Again, I look forward to your testimony today and to working with you to address the challenges before us and to clear the way for continued U.S. leadership in communications.

Thank you. I will now turn to my ranking member, Senator Coons, for his opening statement.

## STATEMENT OF SENATOR CHRISTOPHER A. COONS

Senator COONS. Thank you, Chairman Boozman, for convening this important hearing today.

I would like to welcome our witnesses, Chairman Wheeler and Commissioner Pai. I am thankful for your service and appreciate you joining us here today, given the difficult and important jobs that you have.

I welcome today's opportunity to examine the FCC's budget request and discuss your crucial role in ensuring our national communications infrastructure is reliable, effective, efficient, and constantly innovating. As Americans grow to be evermore connected, we demand even more from our connections. Mobile broadband, smart homes, vehicle-to-vehicle communications, high-definition television (HDTV), interactive television all exist, but on a foundation of shared, limited, public resources.

As the FCC continues to work to foster an environment that encourages these technological achievements, it must also ensure our communications systems work for all Americans, regardless of whether they are rich or poor, urban or rural, young or old.

Even though the FCC is, relatively speaking, a small agency, it touches the lives of millions of Americans every day. Over 90 percent of Americans own a cell phone and about two-thirds of adults use smart phones. Cell phone companies need access to spectrum resources to expand and upgrade their networks.

Already this year, the FCC has auctioned 65 MHz of spectrum in the 1.7 and 2.1 GHz band, the Advanced Wireless Services (AWS-3) auction, which allowed several companies—AT&T and Verizon—to improve their networks, one of which affected my daily life in a meaningful way, while bringing in more than \$44 billion to the U.S. Treasury.

The upcoming incentive auction will be the FCC's most complex yet and will continue to make more spectrum available while bringing in significant resources for the Treasury. So I look forward to hearing more about the FCC's progress in preparing for the upcoming auction and resources you might need.

Just as cell phone use becomes more common, it is becoming more critical our homes, offices, and, in particular, schools are connected to fast and reliable broadband service in all communities. Now the FCC oversees the \$9 billion Universal Service Fund, which expands access to communication systems vital for every American. FCC has worked in the past few years to modernize the fund, to ensure that it includes broadband access, while also reducing waste.

Not only is it important that every student in America has access to state-of-the-art tools to power their education, but also that every town, no matter how rural, has some connection to the vital information systems that drive our economy and, increasingly, our way of life.

The FCC also has a crucial safety and security role. Our Nation's communications networks do more than keep us in touch with friends and families and job opportunities. In emergencies, robust networks also save lives. I look forward to an update about your efforts to improve 911 services, in particular, and to enhance the

Emergency Alert System, as well as your role in helping passenger and freight trains meet new safety requirements.

Your budget request for this year, as the chairman referenced, is \$413 million, \$73 million over the 2015 level, fully offset by fees and with a new proposed transfer from the USF, which I look forward to hearing you discuss.

The FCC also requested \$117 million to operate the spectrum auction, an increase of \$11 million, also fully offset by fees so that none of this has an impact on the deficit.

I'm curious to hear more about the investments you propose to make in the next fiscal year. Aging IT infrastructure, in particular, may cause inefficiencies and lead to mission-critical vulnerabilities to cyberattack. These risks are especially concerning as you plan to conduct your first-ever voluntary incentive auction.

Funding has been frozen for several years, and the forecast for fiscal year 2016, I regret to say, is not encouraging. So I hope you will also take this opportunity to explain in detail how the FCC is identifying cost savings through increased efficiency and eliminating waste.

We have a lot to discuss today. This is important ground to cover. So thank you again for coming to share your perspectives on the FCC's funding requirements and program goals for fiscal year 2016.

Chairman Boozman, I thank you for your leadership, and I am eager to keep working together to advance these bipartisan initiatives. Thank you.

Senator BOOZMAN. Thank you, Senator Coons.

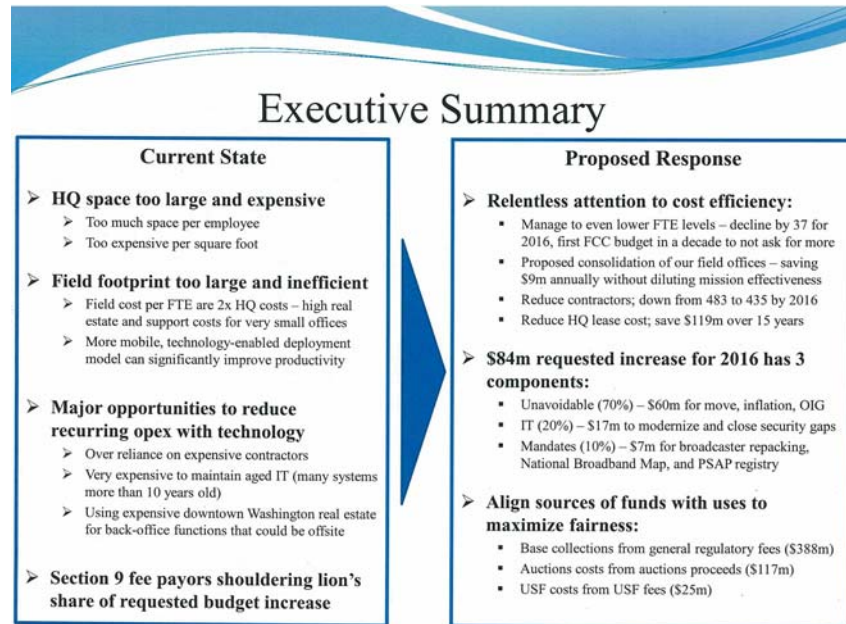
Chairman Wheeler, I invite you to share your testimony.

#### SUMMARY STATEMENT OF HON. TOM WHEELER

Mr. WHEELER. Thank you very much, Mr. Chairman, Senator Coons, members of the subcommittee.

You have my printed statement. I'm an old businessman, and I am presenting to my board of directors here, and I thought I would present like I did back in the day, so you also have a slide deck there that we can walk through, hopefully.

If you look at slide 2, our current reality is that we are paying too much in rent, that we have inefficient field operations, that we are missing the ability to use technology to reduce costs, and that we are burdening fee payers for benefits they don't receive while at the same point in time risking the Universal Service Fund.

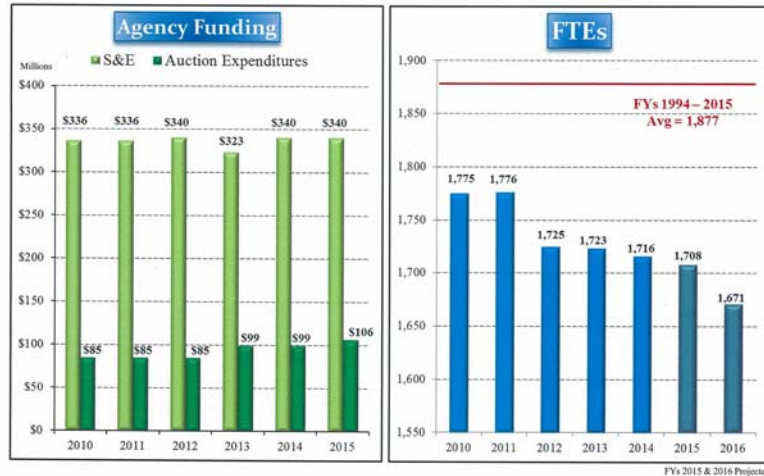


Our response is a budget with the lowest full-time equivalents (FTEs) in 20 years, the first requested FTE reduction in 10 years, the first review of field operations in 20 years, and a reduction in contractors.

Now I've heard this described as the "biggest ever FCC budget." It is not quite that way. The fee-generated budget is lower than last year's budget, before the extraordinary items of our move and a few unfunded mandates.

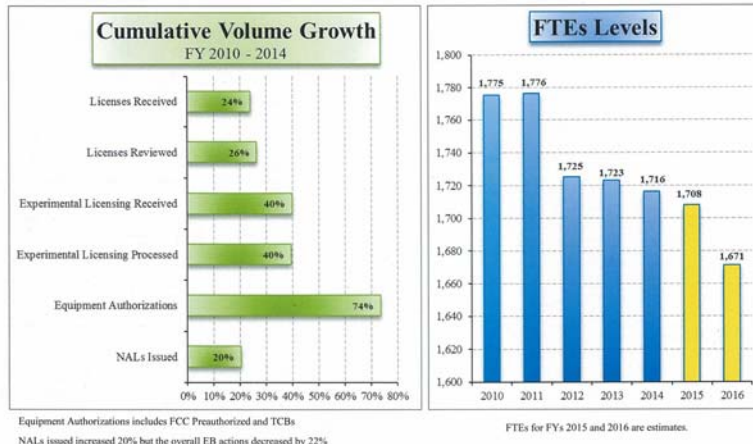
If you look at the next slide, slide 3, this gives you a quick view of the trends in the agency. As you can see on the left, funding has been flat for the last 5 or so years. It is a period in time in which we have had 8 percent inflation, so it is, in essence, an 8 percent decline. And you are seeing our FTEs at the lowest level ever.

**Non-Auctions Funding Has Been Flat Since 2010, and FTEs Continue to Trend to New Historic Lows**



Slide 4 talks about how this is happening at a time of increasing demands that are of great importance to the economy. The chairman talked about this as an agency of economic opportunity. The kinds of things you see on the left, in terms of new equipment operations, licensing, is how that opportunity gets expressed in the economy. And we are putting fewer people against that increase in things that are necessary for the growth of the economy.

### Workload Volume Grows While FTEs Decline



If you take a look at slide 5, we can walk through the cost reductions that we are proposing in this year's budget. We are not filling vacancies. We will have between 100 and 150 people leave the agency for one reason or another this year, and we're not going to fill all of those positions.

### Cost Saving Steps Underway Today

- **FTE reductions**
  - Attrition management (no automatic backfills) – since Jan 2014, 199 staff have left, only 145 replaced
  - Additional efforts underway to identify available workforce restructuring opportunities
- **Field offices consolidation**
  - Proposal currently on circulation to Commissioners to reduce field offices
  - Savings from reduced real estate, administrative overhead, and support costs
  - Post-restructuring, FCC would retain engineers/vehicles on the ground combined with a "tiger team" quickly deployable anywhere in the U.S.
    - One-day response time for 80% of U.S. population
    - Higher coverage than today for the rest of the country
- **Contractor drawdown**
  - FCC-wide contractors currently at 483, down from over 600 since 2012, and trending to 435 in 2016
  - IT modernization investments essential for continued progress; will support significant reduction in expensive (2x), on-site contractors for infrastructure management and software development
  - Additional contractor reductions available via use of IT automation to replace labor-intensive processes
- **Continuing, ongoing efficiency review**
  - Office of Managing Director is assessing every part of the FCC for additional efficiency opportunities

We are updating our field office activity. When you have the kind of flat funding we are looking at, we have to be more efficient. That is one way of doing it.

We are going to reduce the number of contractors. We are asking for more IT funds so that we can reduce the number of contractors, and everybody knows contractors are the most expensive bodies you can hire. And this is the kind of business-like assessment that we will make on an ongoing basis.

So that reflects itself on slide 6, in how you build the budget itself. The fee-generated budget, as I said earlier, is lower than last year before the extraordinary items. The move, which will save money but which we have to pay for upfront, will save \$190 million gross, and requires a \$51 million down payment. And in a \$400 million budget, that's a big skew.

## SLIDE 6

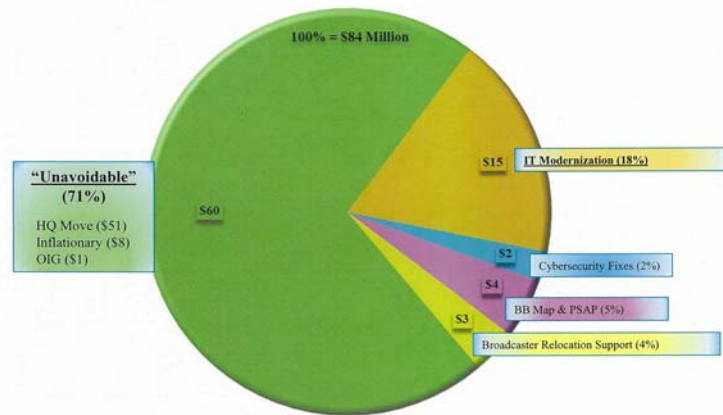
Building the Budget			
\$millions			
	Fee-generated	Activity-generated	
		Auction	USF
FY2015 Budget Authority	340	106	N/A
Requested FY2016			
▪ Office move (to save \$119m)	44	7	
▪ Inflation/contractual cost increases	7	1	
▪ OIG request	1		
▪ IT Modernization	15		
▪ Cybersecurity fixes	2		
▪ Reallocation of USF support	(25)		25
▪ Mission mandates			
▪ National Broadband Map	3		
▪ PSAP do-not-call registry	1		
▪ Broadcaster relocation fund oversight		3	
Total	388	117	25

There are mandates that have been imposed, that we have been told to carry out, but not funded, such as broadcaster relocation, such as public safety do not call, such as the broadband map, such as cost-of-living increases. Together, they come to about \$65 million, \$66 million. You remove those and you reduce that budget by \$66 million. That kind of puts into perspective where we are on an apples-to-apples budget.

On slide 7, we look at how that increase breaks down in percentages. Seventy-one percent are these unavoidable costs that I just discussed. Eighteen percent goes for IT improvements, which again are the underpinning of being able to be more efficient and have cost reduction. Nine percent goes to the mandates that we have. And 2 percent goes to cyber fixes that we have been told we have to have in place.



### More Than 70% of Requested FY 2016 Spending Increase\* Is for “Unavoidable” Costs



\* Note: Total \$84m requested spending increase is the sum of requests for Salary & Expenses (\$48m, from \$340m to \$388m), Auctions (\$11m, from \$106m to \$117m), and USF Transfer (\$25m). Without USF Transfer, S&E requested level would grow from \$388m to \$413m.

But if you look at slide 8, controlling costs through technology is how business handles the kind of situation that we find ourselves in. So let's take a quick look at what we are doing with technology.

### IT Investments Pay for Themselves Over 5 Years and Significantly Improve Speed, Security, and Quality

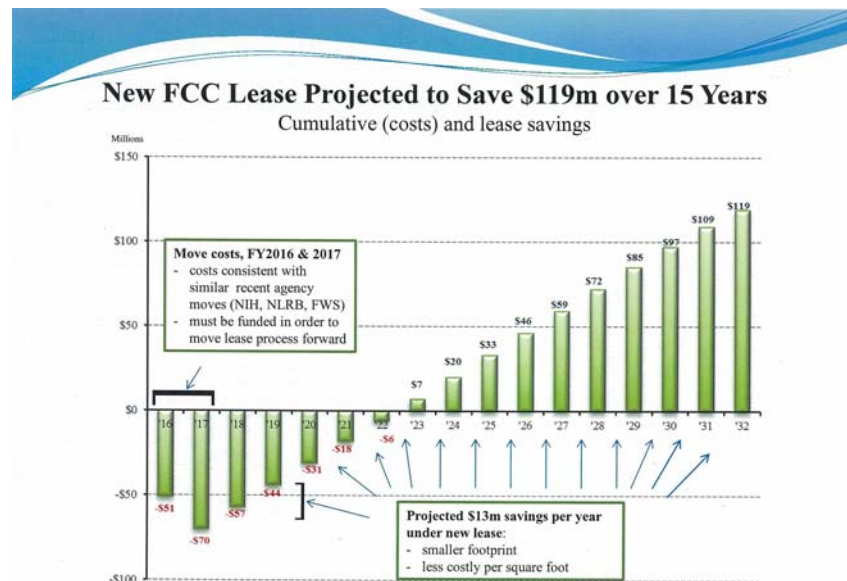
Infrastructure	<p><b>From:</b> Over 200 on premises, antiquated servers occupying expensive downtown real estate</p> <p><b>To:</b> 100% off-premise, cloud-based deployment in a secure multi-agency facility; <u>savings of \$1-2m per yr</u></p>
Data	<p><b>From:</b> 100,000 unique data objects, 43 Tb of stove-piped, inaccessible and non-reusable data</p> <p><b>To:</b> Single data architecture for ALL internal and external data, significantly enhanced transparency</p>
Mission Systems	<p><b>From:</b> 207 systems, typical \$600,000 cost for new projects, 6 months to complete, very high ongoing maintenance/support</p> <p><b>To:</b> Handful of core systems supporting multiple front end applications, 50-75% lower cost / faster timelines per project; <u>savings of \$1-2m per year</u></p>

We're going to move to the cloud. That saves us \$1 million to \$2 million a year. We are going to have a single architecture, which means less maintenance, which means fewer consultants and more productivity. And we are going to move to a common core platform, which, again, will save us \$1 million to \$2 million a year.

But as I said, the big enchilada in this budget is the move. The way government accounting works is that you have to pay it upfront.

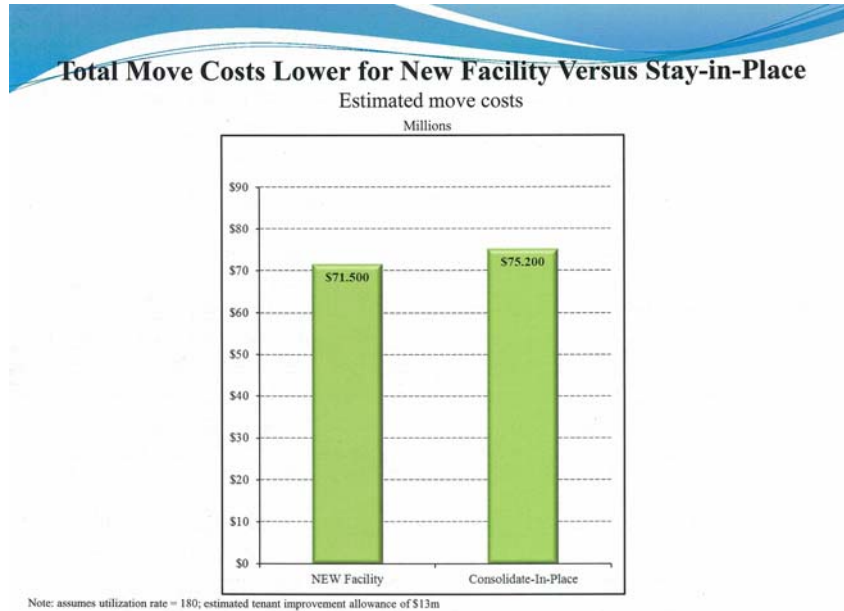
The chart on slide 9 talks about why it needs to happen, illustrates why it needs to happen. We are going to move to smaller space. We are going to move from 650,000 square feet to 475,000 square feet. We're going to move to lower-cost space. We are paying about \$60 a square foot right now, and the General Services Administration (GSA) tells us we can get it for about \$45 a square foot.

SLIDE 9



And to make these kind of savings, which will total \$190 million, we need to invest \$51 million this year.

On the last slide, slide 10, the question has been asked, why don't you just stay where you are? Our lease is up. We could stay in place. If I were the landlord, I would use that great bargaining position that I have to make sure that the rates go up substantially. We would have to have some interim relocation activities, just like we have to have for another move. We would have to have new physical assets, because of newly designed spaces.



So actually, you end up spending about \$4 million more to stay in the same place than if we were to move. So that is why we think it is a prudent investment to spend \$51 million this year to save \$190 million over the life of the lease.

And I look forward to discussing it with you further. Thank you.  
[The statement follows:]

PREPARED STATEMENT OF HON. TOM WHEELER

Chairman Boozman, Ranking Member Coons, and members of the Financial Services and General Government Subcommittee, I am pleased to appear before you to present the Federal Communications Commission's fiscal year 2016 budget request.

Since first initiating a top-to-bottom management review last year, the FCC's team has sought ways to streamline work, leverage assets, and create more efficiencies. We have not shied from making difficult choices, and you can see the results in our proposed fiscal year 2016 budget. This proposal reflects improvements in the FCC's operational efficiency and a corresponding reduction in our full-time equivalent (FTE) levels. Our requests for increased investments are largely short-term costs like IT modernization efforts that will deliver long-term savings and improvements in the agency's efficiency and effectiveness. Most notably, this year's budget contains one significant cost where we have very limited control—the agency's lease is expiring in 2017, and we must initiate plans to transition to a less expensive real estate option. With the pending lease expiration, this is no ordinary budget cycle, and adjustments will be necessary.

Before diving into the fiscal year 2016 details, it is important to acknowledge some baseline facts. Few, if any, Government agencies deliver a better return on investment than the FCC. We do not require a direct appropriation because we are funded entirely by fees collected from those we regulate. The Commission not only pays its own way, but, thanks to our world-leading auction capability, we also generate significant revenue for the Treasury. Since 1994, our financial return to the Government has equaled 13 times our combined operational costs. For every dollar generated by the FCC, our agency uses only 8 cents for its operations.

The Commission's spectrum auctions are one of the most significant policy innovations of the past 25 years, and they continue to generate billions of dollars and unleash massive benefits for our economy and consumers. Already in the current fiscal

year, we completed the most lucrative spectrum auction in history. The AWS-3 auction generated \$41 billion in net bids, and is expected to deliver over \$20 billion toward deficit reduction, as well as billions of dollars of funding for nationwide public safety communications under FirstNet, and a range of other programs mandated by Congress in the Middle Class Tax Relief and Job Creation Act of 2012. The first-in-the-world Incentive Auction is slated for 2016 and holds similar promise to spur economic growth and innovation while raising billions for deficit reduction.

To build on this progress, and fulfill our statutory responsibilities, the Commission is requesting \$388,000,000 in general spending authority derived from Section 9 regulatory fees for our overall non-auction costs, up from \$339.8 million in fiscal year 2015. In addition, we are requesting an auctions cap of \$117,000,000, an \$11 million increase from last year, as well as the transfer of \$25,000,000 from the Universal Service Fund (USF) to cover our costs for that program. These are well-considered requests that reflect necessary operational demands and the unique circumstances of this budget cycle.

If the Commission's lease were not expiring in 2017, our budget proposal would look different and my presentation today would be limited to a discussion of our team's better management practices, significant IT improvements, and internal structural and processing reforms. We would have been asking for a modest increase over last year's funding level dedicated to completing the modernization program of our IT systems—so we could start reaping the benefits of lower costs and better services.

But our lease is expiring, and that is the biggest reason we are requesting a budget increase. So let me address this issue up top. We owe it to the American taxpayer to find the most cost-effective solution for our housing costs. In the near-term, that will cost money—an estimated \$51 million for fiscal year 2016. These costs are similar to recent agency moves like NIH and NLRB. Long-term, we will use the move as an opportunity to create greater cost savings and efficiencies by significantly reducing the Commission's footprint and instituting new management techniques that encourage greater use of shared space. Current projections show \$13 million in annual savings under a new lease and net savings of \$119 million over the life of a new lease. Yes, the costs will be significant for the coming year, but they are an investment in a better overall deal for the American people.

Since testifying before the House Financial Services Appropriations Subcommittee in March, we hired a new staff person with significant experience in agency relocations to assist us with this process. And the new leasing option is just one example of the agency's commitment to reviewing all of our policies and processes to improve efficiencies and make sure the American people are getting the most bang for every buck. We also already have initiated a space reduction plan to consolidate all FCC headquarters staff in the main building of our complex. This pre-move consolidation will result in cost avoidance and savings in fiscal year 2016.

In addition, we recently circulated to all FCC Commissioners a rule change related to our field office structure based on a comprehensive consultant's evaluation of these facilities. Overall, the offices have a one-manager-to-four-employee ratio and many have oversized rental facilities, which are draining our resources. The consultant's findings indicate that we can more efficiently deploy staff by decreasing the number of managers and relying instead on an engineer-intensive "tiger team" approach that makes better use of regional offices, including pre-deploying equipment on the ground and partnering with other Federal officials in remote areas. This plan, if accepted by my fellow Commissioners, will lead to field office closures and significant annual savings without diminished productivity. I look forward to working with my colleagues to review and finalize this matter.

Even before the inclusion of these facilities plans, the FCC's operations were the leanest they've been in recent history. During the past 6 years—beginning after fiscal year 2009—the FCC has operated under essentially flat funding levels for our non-auctions activities. In fact, calculating the flat funding levels in light of inflation and sequestration impacts shows that we have suffered actual reductions in the purchasing power of our budget. Although our auctions cap increased in fiscal year 2013—fiscal year 2015 after a 9-year flat cap, auctions monies only offset auctions operations. We have mostly directed these increases toward additional costs related to the broadcast incentive auctions process.

Flat funding has led to difficult decisions on staffing, as with the field facilities plan. Make no mistake; the FCC's greatest asset is its people. While the professional quality is the highest it's ever been, the quantity is at historic lows. We are currently at 1,708 FTEs, well below the 20-year average of 1,877. Nonetheless, our fiscal year 2016 budget request is the first FCC budget in a decade that does not seek more FTEs. Our fiscal year 2016 projections include a net 37 FTE reduction, including an overall non-Office of Inspector General (OIG) reduction of 45 (offset by an

OIG increase of 8 FTEs). At this stage, our Managing Director's Office is using a flexible process and only fills positions opened through attrition after a complete analysis of staffing needs.

We will continue to seek efficiencies that allow the FCC to continue to perform its mission, but there are limitations. Seeking even lower FTE levels could have adverse operational effects. While the Commission's staffing and resources have been steadily shrinking, the industries we oversee have continued to grow at a healthy clip. The result is an increasing workload for a declining FTE base. For example, in the licensing operations area since 2010, our FTE levels have declined by more than 25 across several bureaus, versus steady growth in licensing activity over that same time, so at some point licensing operations could slow. The result—especially without IT system upgrades—is slower licensing.

There are other reforms under way to reduce costs and increase efficiency. We're steadily reducing our use of expensive contractors. We are currently at 483, down from over 600 in 2012, and trending down to 435 by the end of fiscal year 2016.

We are aware that the Commission's licensees will bear the brunt of our programming costs, and we are continuing to ensure that we assess fees in a fair and equitable manner. This past year, we reduced the burden of regulatory fees on smaller businesses by increasing the *de minimis* payment level. This action relieved approximately 2,500 small licensees—those owing less than \$500—from having to pay fees. We also have recalculated the amounts due by different licensees to ensure regulatory fairness, and we will continue to revise this process as warranted by industry developments.

Here's an important point about all of these reforms: these are management efficiencies we would be pursuing regardless of budget levels. I am committed to modernizing and streamlining all agency operations, because it's the right way to run an agency, not because budget constraints demand it.

Building on this foundation of reforms, we are requesting an \$84 million increase for fiscal year 2016. This increase has three key components. First, there are "unavoidable" costs that account for 70 percent of this overall increase. Chief among these is the \$51 million that I mentioned for the agency's pending move. This amount also includes adjustments for inflation, and a \$1 million requested increase for the Office of the Inspector General, bringing their budget to \$12.2 million.

Second, we are seeking an additional \$17 million for Information Technology (IT) investments. Our commitment to improving the agency's effectiveness goes hand-in-hand with the need to improve our IT systems: numerous paper-based, manual processes exist at the FCC, resulting in hidden, human-intensive costs that could benefit from automation. Moreover, the costs of continuing business as usual with these IT systems will undermine the financial stability of the Commission. The Government Accountability Office has noted that Federal agencies currently spend more than 70 percent of their IT budgets on maintaining legacy systems. The FCC, like other agencies, has been caught in this legacy trap; as of the end of fiscal year 2013, we were trending well above even the Federal average of 70 percent. We have tackled this problem head-on and targeted all available resources toward modernizing our IT systems. We pulled together our remaining funds at the end of fiscal year 2014 and reprogrammed \$8.75 million to support this process.

We identified our ongoing IT modernization as a management imperative, both to support process reform efforts as well as to improve cost efficiency, and our fiscal year 2016 budget request reflects this emphasis. Our IT-focused management strategy—made possible by the reprogramming granted by this subcommittee—has delivered solid, early results. We are well on our way toward making the necessary changes to ensure that our FCC.gov Web site is accessible and user friendly for consumers and stakeholders. We have initiated a process to move all onsite IT infrastructure to a secure, lower cost, off-site service provider ahead of our 2017 required move, to realize cost savings and improve system resiliency. We also rolled out the new Consumer Complaint Database at one-sixth the traditional cost for such a project, epitomizing many of the agency-wide changes that we hope to implement—inexpensive, off-the-shelf solutions, combined with resiliency, user-friendly options, and the potential to improve our internal data collection methods to increase transparency and inform policy-making decisions.

Still, limited funds have delayed many improvements and threaten to cost us more each day that we are unable to move ahead. The specific funds required are outlined in our fiscal year 2016 budget: \$5.8 million to replace the FCC's legacy infrastructure with a managed IT Service provider, as well as one-time infusions of \$9.6 million to rewrite the FCC's legacy applications as part of a modular "shift" to a modern, resilient, cloud-based platform. Without this infusion of funding in fiscal year 2016, we face the prospect of being unable to follow-through on critical upgrades, costing those who we license more—with far fewer benefits.

The third area of requested budget increases—about \$7 million—are aimed at satisfying congressional mandates. We seek \$2.5 million to ensure a smooth and legally compliant process for administering the \$1.75 billion fund for relocating broadcasters after the incentive auction. We have asked for \$250,000 to support the start-up of the Do-Not-Call Registry and \$600,000 for yearly maintenance. We also requested \$3,000,000 a year for updates and upkeep for the National Broadband Map. Before the FCC inherited the program, NTIA had a direct funding stream for this key nationwide broadband deployment resource. The map attracted over 2.5 million hits in 2014 and we expect it to be an important resource going forward. Funding for the FCC's programmatic takeover will leverage previous investments with new approaches to providing open access to government data.

In addition to these requested increases, the budget also proposes aligning sources of funds with uses to maximize fairness. Given the special circumstance of the large, move-based increase, the Commission determined that fiscal year 2016 would be the optimal time to properly align our USF expenditures with cost outlays. Accordingly, the fiscal year 2016 budget proposes shifting USF funds to cover our salary and compensation expenditures directly related to universal service activities. With this funding realignment, we will make USF pay for USF. It will reduce by \$25,000,000 the Section 9 regulatory fee burden on licensees with no universal service relationship. USF will pay these costs instead of forcing entities such as local broadcasters and marine licensees to pay for USF FTE activities at the Commission. Overall, it would reduce Section 9 fee burdens by about six percent. For example, the impact on a large-market broadcaster would be several thousand dollars per year. It will take the pressure off of our other licensees at a critical juncture and it will ensure that there is adequate enforcement of USF programs.

The \$25 million transfer will go a long way toward making certain that we have a reliable funding stream for program oversight. Although regulatory fairness supports this transfer request, the importance and ongoing complexity of our universal service work underscores the need for this funding. Universal access to communications has been at the core of the FCC's mission since the agency was established 80 years ago. With broadband increasingly necessary for full participation in our economy and democracy, connectivity for all is more important than ever. While the private sector must play the leading role in extending broadband networks to every American, there are some areas where it doesn't make financial sense for private companies to build. That's why the Commission modernized USF to focus on broadband, establishing the Connect America Fund—a process that this subcommittee has recognized as an essential activity. Already, the Connect America Fund (CAF) has made investments that will make broadband available to 1.6 million previously unserved Americans.

The Commission approved the first major modification of E-rate—another universal service program and America's largest education technology program. We refocused the program away from funding 20th century technologies like pagers and dial-up phone service toward supporting 21st century high-speed broadband connectivity. In the process, we moved to close the Wi-Fi gap by ensuring that over the next 2 years an additional 20 million students will have Internet access at their school or library desk. Importantly, we took steps to improve the cost-effectiveness of E-rate spending through greater pricing transparency and by enabling bulk purchasing to drive down costs.

#### CONCLUSION

I am proud of the Commission's fiscal year 2016 budget request. It reflects our commitment to an efficient workforce, IT modernization and returning resources to the Treasury. During the next fiscal year, the Commission will have unprecedented opportunities to become a model for excellence in government. At the same time, we will manage an essential \$8.8 billion USF program that brings broadband services to all Americans. We will continue our work in developing and deploying spectrum resources, while providing billions of dollars for important public safety programs. With this Subcommittee's support, we will make that happen.

I appreciate this subcommittee's attention to the Commission's funding for the next fiscal year, and I look forward to answering your questions. Thank you.

Senator BOOZMAN. Thank you, Chairman Wheeler.

Commissioner Pai, you are welcome to give us your testimony.

## SUMMARY STATEMENT OF HON. AJIT PAI

Mr. PAI. Thank you. Chairman Boozman, Ranking Member Coons, members of the subcommittee, it is a privilege to appear before you today. Thank you for inviting me to testify on the FCC's budget request.

This year, the FCC requests a 17 percent increase in its overall budget authority, or a baseline budget of \$413 million. Although all commissioners are asked to vote on a budget proposed by the chairman, I've not been asked to participate in the development of this request, and I am unable to support it.

Here is some perspective. When the FCC faced the monumental task of conducting 80 separate rulemakings to implement the Telecommunications Act of 1996, the agency's baseline budget after adjusting for inflation was only \$277 million, or 33 percent less than this budget request. At a time when domestic discretionary spending is generally scheduled to remain flat under the current budget caps, I don't believe that this request is fiscally responsible. At a time when median family income in this country is still lower than it was in 2007, Federal agencies should be looking for ways to tighten their belts.

For these reasons, I would like to offer three specific suggestions as the subcommittee crafts the FCC's fiscal year 2016 budget.

First, I do not favor transferring \$25 million from the Universal Service Fund, or USF, to the Commission to fund the FCC's work. Wherever possible, money from the USF should be spent across the country to realize the promise of universal access to communication networks to every American, no matter how rural, as Ranking Member Coons aptly put it, not here in Washington on administrative expenses.

Second, funds for moving the FCC's headquarters should not be included within the FCC's general budget authority. Instead, Congress should give specific budget authority for this purpose. If these funds are included within our general appropriation amount, it will paint a misleading picture of the Commission's baseline budget and make it harder to reduce that budget when the need is no longer there to spend money on moving expenses.

Third, Congress should deny the Commission the use of appropriated funds to implement or enforce the plan the FCC recently adopted to regulate the Internet. Whether applying the general Internet conduct standard to new business practices, drafting advisory opinions in the enforcement bureau, or hiring a new ombudsperson for the Internet, the Commission will spend a lot of money and time applying regulations that are wasteful and unnecessary and that are already proving harmful to the American public.

Given that the FCC is struggling to fulfill core responsibilities under the Communications Act, it is irresponsible to spend millions of dollars regulating the Internet.

Outside the budget, there is another issue with a fiscal impact that I would like to discuss this morning. The FCC must take immediate action to end abuse of the Designated Entity (DE) program. What was once a well-intentioned program designed to help small businesses has become a playpen for corporate giants.

The FCC's recent Advanced Wireless Services (AWS-3) spectrum auction is a shocking case in point. Earlier this year, the FCC disclosed that two companies, each of which claimed it was a "very small business" with less than \$15 million in revenues together won over \$13 billion in spectrum licenses. Those very small businesses are now claiming over \$3 billion in taxpayer-funded discounts.

How could this be? DISH Network, which has annual revenues of approximately \$14 billion and a market capitalization of over \$31 billion, has an 85 percent ownership stake in each of those supposedly small businesses.

To be frank, I'm appalled that a corporate giant has attempted to use small-business discounts to rip off American taxpayers to the tune of \$3.3 billion. This is money that otherwise would have been deposited into the U.S. Treasury, and it could've been used to fund over 581,000 Pell grants, to pay for the school lunches of over 6.3 million schoolchildren for an entire school year, or to extend tax credits for the hiring of over 138,000 veterans for the next decade. As appropriators, as taxpayers, you know that this is real money.

The DISH entities' applications are pending before the FCC. If DISH didn't comply with FCC's rules, we must reject any discounts. And going forward, the FCC must fundamentally reform the DE program to prevent big business from ripping off the American taxpayer ever again. The American people deserve no less.

Chairman Boozman, Ranking Member Coons, members of the subcommittee, thank you once again for inviting me to testify. I look forward to answering your questions and to working with you and your staff in the days to come.

[The statement follows:]

#### PREPARED STATEMENT OF HON. AJIT PAI

Chairman Boozman, Ranking Member Coons, and members of the subcommittee, it is a privilege to appear before you today. Thank you for inviting me to testify on the work of the Federal Communications Commission.

Prior to becoming a Commissioner, I had the opportunity to serve on the agency's staff. Every member of my Office has also previously been a Commission staffer. And I have many friends who currently work in the Commission's Bureaus and Offices. There will probably be disagreement over some of the issues that we will discuss today. But I hope that we will be able to agree on one thing: The FCC's staff is filled with talented individuals who are dedicated to serving the American people.

Today, I will focus my remarks on three specific topics: the FCC's fiscal year 2016 budget, rural broadband deployment, and recent abuse of the designated entity program.

*Fiscal Year 2016 Budget.*—Although all Commissioners are asked to vote on a budget proposed by the Chairman that is delivered to the Office of Management and Budget, I have not been asked to participate in the development of the agency's budget request. And after reviewing this proposal, I am unable to support it.

To be sure, this subcommittee should give the FCC the resources necessary to carry out its core responsibilities. We tackle a wide variety of tasks assigned by Congress, from freeing up more spectrum for mobile broadband to protecting public safety. But in its request, the FCC asks for a 17 percent increase in its overall budget authority. In all, the Commission is requesting a baseline budget of \$413 million.

That is dramatically higher than it has been at watershed moments in the agency's history. For instance, the agency's baseline budget, after adjusting for inflation, was \$277 million (or 33 percent less than this budget request) when it faced the monumental task of conducting 80 separate rulemakings to implement the Telecommunications Act of 1996.

At a time when domestic discretionary spending is generally scheduled to remain flat under the current budget caps, I do not believe that this request is fiscally responsible. And at a time when so many Americans in this country are struggling



to make ends meet in this stagnant economy (median income is lower now than it was in 2007), Federal agencies should be looking for ways to tighten their belts.

For these reasons, I would like to offer three specific suggestions as the subcommittee crafts the FCC's fiscal year 2016 budget. First, I do not favor transferring \$25 million from the Universal Service Fund (USF) to the Commission to fund the FCC's work. Wherever possible, money from the USF should be spent across the country to realize the promise of universal access to communications networks, not here in Washington, DC on administrative expenses. Moreover, this \$25 million transfer is a stealth tax increase on the American people.

*Second*, I do not believe that funds for moving the FCC's headquarters or reorganizing how we use our existing facilities (known internally as "restacking") should be included within the FCC's general budget authority. If these funds are included within our general appropriation amount, it will give many a misleading picture of the Commission's baseline budget and make it harder to reduce that budget when there is no longer the need to spend money on moving expenses. Instead, I believe that Congress should provide us with specific budget authority for this purpose.

*Third*, Congress should forbid the Commission from using any appropriated funds to implement or enforce the plan the FCC recently adopted to regulate the Internet. The implementation and enforcement of these new rules will not only impose significant burdens on the Nation's 4,462 Internet service providers and harm American consumers; they will also consume substantial FCC resources. Whether applying the general "Internet conduct" standard to new business practices, drafting advisory opinions in the Enforcement Bureau, or hiring a new Internet "Ombudsperson," the Commission will expend substantial resources implementing and enforcing regulations that are wasteful and unnecessary, and are already proving harmful to the American public. For example, KWISP Internet, which serves 475 customers in rural northern Illinois, has told the Commission that because of the regulatory uncertainty and costs created by the FCC's decision, it plans to delay network upgrades that would have upgraded customers from 3 Mbps to 20 Mbps service, new tower construction that would have brought service to unserved areas, and capacity upgrades that would reduce congestion for existing customers.

At a time when the FCC is struggling to fulfill many of its core responsibilities under the Communications Act, it is irresponsible for the Commission to spend millions of dollars to regulate the Internet. This subcommittee is well aware that budgets are finite. Funds spent on diversions like regulating the Internet are funds that can't be spent on critical priorities. Instead of trying to fix something that isn't broken, let's use our limited budget to fix something that is broken, such as the Commission's Lifeline program.

*Lifeline.*—The Lifeline program has a noble purpose. And for about a couple of decades after its inception in 1985, the program was generally free of substantial controversy. During the last administration, for example, Lifeline grew at an annual rate of just 2.1 percent in real terms. Unfortunately, things quickly changed thereafter.

From the end of 2008 to 2012, the size of the program exploded from \$819 million to \$2.19 billion, an increase of 25.9 percent a year in real terms. This growth was fueled by substantial fraud and abuse. Phone companies were claiming subsidies for phantom customers or siphoning multiple subsidies for the same person. And some consumers were apparently signing up with every Lifeline company around. A 2013 FCC investigation identified 306 individuals, each of whom had signed up for at least four Lifeline accounts—some actually had 11 accounts in their name!

The good news is that State regulatory commissions took notice, and eventually the FCC did as well. In 2012, the FCC adopted new rules designed to reduce some of the waste, fraud, and abuse of the program. For example, the agency created a National Lifeline Accountability Database to prevent multiple carriers from getting subsidies for the same customer. Those initiatives have proven to be a useful start. For instance, in 2014, the Lifeline cost program \$1.6 billion. This was a drop from 2012—but still twice as high as it was in 2008 before the abuse began.

There's much work yet to be done to effect real reform of the Lifeline program.

*First*, the time has come to put Lifeline on a budget just like we have done for every other program under the Universal Service Fund. It's as true for a Federal program as it is for a family: A budget induces careful spending. A Lifeline budget will increase incentives to eliminate fraud and improve accountability within the program. Placing a cap on Lifeline spending will also prevent any future explosion in spending without direct Commission accountability.

*Second*, we must reduce the financial incentives for people to commit Lifeline fraud. Lifeline was not designed to give people free phone service. It was intended to provide low-income consumers with discounted phone service. And the recent

shift to free wireless service plans has dramatically increased the incentive for individuals to break the FCC's rules by signing up for the program more than once.

Most importantly, we need to stop wireless carriers participating in Lifeline from giving away free phone service. Instead, recipients should make some monthly contribution. Requiring some "skin in the game" would align the Lifeline program with our other universal service programs, each of which requires some contribution by recipients to cut down on waste, fraud, and abuse.

Next, we need to empower the states to police the program. The Lifeline program has historically been a Federal-State partnership, with states offering their own funds to supplement the Federal program and doing their part to squelch misconduct. Nothing in the law prevents the FCC from clarifying that states are free to take appropriate measures to ensure the integrity of the program.

*Third*, the FCC must step up its enforcement efforts. Under former Chairman Clyburn and during the first few months of Chairman Wheeler's tenure, the FCC proposed substantial forfeitures against carriers for allegedly violating our Lifeline rules. But there's been only scattershot action ever since; as Senator McCaskill put it at a recent hearing, "we've had some enforcement, [but] there hasn't been much in a year." The waste, fraud, and abuse haven't stopped—and we shouldn't either. Now is the time to make fighting Lifeline fraud a priority again.

And *fourth*, there's been much talk about expanding Lifeline to cover broadband. Before we do that, however, we need to do our due diligence. The Commission has already held a pilot program to test out subsidies for broadband and how that impacts adoption. But we still haven't seen the results.

Before there's any discussion of expanding the program to broadband, we have to finish that report and give Commissioners and the American public a meaningful opportunity to study it and provide their feedback. After all, the most definitive study of broadband adoption to date suggests that two thirds of non-adopters wouldn't subscribe to broadband at any price. So we need to be cautious about expanding the Lifeline program and make sure we're really getting a bang for the taxpayer's buck.

*Rural Broadband.*—Although the Communications Act of 1934 is not perfect, it does make an important promise in its very first sentence: Congress created the Federal Communications Commission to "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."

We at the FCC need to take this promise seriously. We must recognize that broadband operators in rural America today face unique challenges. Unlike the urban environment, rural carriers must carefully plan their infrastructure over a 10- or 20-year time scale if they are to recover their costs. Congress recognized this reality in section 254 of the Act, embedding the statutory command that universal service support be "predictable."

The good news is that in 2011, the Commission fundamentally reoriented the Universal Service Fund to support broadband, rather than just telephone service. It also set a budget for the high-cost fund and laid out the steps that were needed to move forward with implementation.

The bad news is that we're behind schedule. The Universal Service Transformation Order promised to start distributing support through the Connect America Fund Phase II, the Mobility Fund Phase II, and the Remote Areas Fund in 2013. But only last month did we finally make our State-level offers to price-cap carriers, and this means merely that we've gotten through Part 1 of the CAF Phase II process. We still need to establish the rules for Part 2—competitive bidding—and the timeframe for doing that is uncertain. We're even further behind when it comes to the Mobility Fund Phase II and the Remote Areas Fund.

We're also behind when it comes to fixing known problems with the Universal Service Fund. A good example of this is the stand-alone broadband problem. Through a quirk of regulatory history, our rules offer universal service support to carriers that build out broadband, but only when they bundle their broadband services with traditional telephone lines. That system has increasingly come under strain as consumers flee landlines in favor of wireless and Internet-based alternatives. Indeed, it has put some carriers to a Hobson's choice. Either they offer stand-alone broadband—which urban consumers have and rural consumers want—and lose universal service support, or they deny consumers a broadband option and risk the customer dropping service altogether. Perversely, it's more profitable for some carriers to lose a customer entirely than retain him or her as a stand-alone broadband customer. The net result is that rural carriers hold back investment because they are unsure if they can deploy the services that consumers are demanding.

A stand-alone broadband funding mechanism would correct this vestige of our outdated rules. I was pleased last June that my colleagues agreed with my suggestion to propose such a mechanism for rate-of-return carriers serving the highest-cost reaches of our country. It would give consumers a real option of choosing whether they want to purchase broadband and telephone service from the same company. It would give carriers more assurance that legacy regulations won't prevent them from responding to consumer demand, thus increasing broadband deployment. And it could be done within the existing budget, something everyone with a phone line can celebrate. We need to live up to our commitment to get this done by the end of the year.

The to-do list regarding the Universal Service Fund goes even further. We should implement the 100 percent overlap rule to ensure that universal service funds are targeted to unserved areas rather than where the private sector has already deployed. We should commence a rulemaking to deal with the unique challenges of rural broadband deployment in Alaska. We should move forward with a voluntary path to model-based support for interested rate-of-return carriers. We should stop spending universal service funds to increase rural telephone rates and get rid of the "rate floor" that penalizes rural areas but not big cities like Washington, DC. And more.

To be clear, none of this is meant as criticism of our hard-working staff. Deputy Chief of the Wireline Competition Bureau Carol Matthey and the members of the Telecommunications Access Policy Division have done yeoman's work over the past several years, modelling the costs of deploying a next-generation network, sifting through complicated waiver petitions, and poring over countless competing claims that a particular census block is served by broadband (or not). They represent the best of public service.

Instead, I believe that the Commission has embraced the wrong priorities. Rather than focusing for the last year on adopting Internet regulation—a solution that won't work to a problem that doesn't exist—we should have concentrated on ensuring that we have truly universal broadband deployment. Digital opportunity for millions of Americans hangs on our decisions on rural broadband. Even if their plight doesn't grab headlines, we have a responsibility to hear them. I believe that no part of rural America should miss the broadband revolution while waiting for the regulatory dust to settle. And so I hope the Commission—not just the staff, but the full Commission—will be moving forward soon on all these fronts to facilitate more rural broadband.

*DE Program.*—The FCC must take immediate action to end abuse of the designated entity program. What was once a well-intentioned program designed to help small businesses has become a playpen for corporate giants.

Here's how the program was supposed to work. When Congress first granted the FCC auction authority in 1993, its goal was to help small businesses—"designated entities" in FCC parlance—compete for spectrum licenses with large, established companies. A small business that lacked the funding to outspend a large corporation could bid, say, \$100,000 for a license but end up paying only \$75,000. In effect, a Federal subsidy would cover the remaining \$25,000.

Perversely, this well-intentioned program now helps Goliath at David's expense. Small business discounts are now being used to give billions of dollars in taxpayer-funded subsidies to Fortune 500 companies and to make it harder for legitimate small businesses to compete in the wireless market. A bipartisan, bicameral chorus in Congress has raised concerns about this state of affairs. And the public is taking notice as well. For instance, Americans for Tax Reform, the Communications Workers of America, and the NAACP have all pointed out that big businesses are now abusing the program and driving out legitimate small and minority-owned businesses.

The FCC's recent AWS-3 spectrum auction is a shocking case in point. Earlier this year, the FCC disclosed that two companies, each of which claimed it was a "very small business" with less than \$15 million in revenues, together won over \$13 billion in spectrum licenses and are now claiming over \$3 billion in taxpayer-funded discounts. How could this be? DISH Network Corp. has an 85 percent ownership stake in each (not to mention highly intricate contractual controls over each). Allowing DISH, which has annual revenues of approximately \$14 billion and a market capitalization of over \$31 billion, to obtain over \$3 billion in taxpayer-funded discounts makes a mockery of the small business program. Indeed, DISH has now disclosed that it made approximately \$8.504 billion in loans and \$1.274 billion in equity contributions to those two companies—hardly a sign that they were small businesses that lacked access to deep pockets.

I am appalled that a corporate giant has attempted to use small business discounts to box out the very companies that Congress intended the program to benefit

and to rip off American taxpayers to the tune of \$3.3 billion. This is money that otherwise would have been deposited into the U.S. Treasury. This is money that could be used to fund 581,475 Pell Grants, pay for the school lunches of 6,317,512 children for an entire school year, or extend tax credits for the hiring of 138,827 veterans for the next 10 years. As appropriators, you know that this is real money.

And it is certainly not too late to ensure that the Treasury gets it. The DISH entities' applications are pending before the FCC. If it turns out that DISH did not comply with the FCC's rules, the agency must deny them these discounts. The American people deserve no less.

DISH's abuse of the program during the AWS-3 auction also had an enormously negative impact on real small businesses. Small, rural operators throughout our country recently explained that the DE program is having a "devastating impact" on their ability to obtain spectrum and compete. Here are just a few examples:

- Rainbow Telecommunications Association, Inc. (0.098 percent of DISH's size) provides communications services to rural parts of Kansas. Rainbow was the provisionally winning bidder for one license that would have allowed it to serve parts of Kansas, but it was outbid by a DISH entity claiming a taxpayer subsidy. As a result, it did not win a single license in the auction.
- Pioneer Telephone Cooperative, Inc. (0.107 percent of DISH's size) serves rural parts of Oklahoma. Although Pioneer won three licenses in Oklahoma and Kansas, it was outbid by a DISH entity claiming a taxpayer subsidy for another license that it could have used to serve other parts of Oklahoma.
- Geneseo Communications Services, Inc. (0.112 percent of DISH's size) serves rural parts of Illinois. Although Geneseo won two licenses in Illinois, it was outbid by DISH entities claiming taxpayer subsidies for four other licenses that Geneseo could have used to serve different parts of Illinois.

In every one of these cases, the small businesses that the DISH entities outbid either claimed no taxpayer-funded discounts or ones that were smaller than those claimed by DISH.

These examples are just a small part of a much broader story. There were over 440 licenses in the auction for which the DISH entities outbid smaller companies or ones that were not providers of nationwide service that had been winning the licenses. That's more than three times as often as those providers were outbid by AT&T, Verizon, and T-Mobile combined.

The FCC must take action to ensure that this abuse never happens again. We took the first step last month with a public notice that tees up a wide range of proposals that, if adopted, would end this corporate welfare. I want to thank my colleagues for accommodating my request that we put all options on the table—including strictly limiting how much large companies can invest in a designated entity, capping the taxpayer subsidy that any designated entity can obtain during an auction, prohibiting coordinated bidding, and fundamentally revising our attribution rules.

If we are going to heed the lessons of the AWS-3 auction, the work cannot end there. I look forward to working with my fellow Commissioners and Congress to ensure that we implement fundamental reforms to the program. We must have a singular focus in this proceeding: We must close any loopholes that could allow big business to rip off the American taxpayer, not create new avenues for abuse, as the FCC proposed last year over my dissent. And if, in the face of recent experience, the FCC does not follow through to crack down on abuse of the designated entity program, then Congress must act.

Chairman Boozman, Ranking Member Coons, and members of the subcommittee, thank you once again for holding this hearing and allowing me the opportunity to speak. I look forward to answering your questions, listening to your views, and working with you and your staffs in the days ahead.

Senator BOOZMAN. Thank you, Commissioner Pai.

#### FCC BUDGET

Let me ask you, and you touched on this, the FCC's 2016 budget request contains spending increases of more than \$73 million. This represents a 22 percent increase above current levels. In your testimony, you said that you did not support that.

Are there any areas where you believe the FCC should shift resources from current activities to pursue other priorities?

Mr. PAI. Thank you for the question, Mr. Chairman. I do think that there are other areas that would benefit from more and more sustained FCC attention.

For example, weeding out waste, fraud, and abuse in the Lifeline Program and comprehensively reviewing the rules that apply to Lifeline, making sure that we have a standalone mechanism for supporting broadband in rural America. That has been on the shelf for a couple years. It would be great to get that kick-started.

Additionally, freeing up more spectrum for both licensed and unlicensed use, particularly in the 5 GHz band. Implementing more reforms to our rules to make sure there are fewer barriers to infrastructure investment, accelerating what I call the IP Transition.

Finally, providing long-needed relief to the AM radio band. There are a lot of great AM broadcasters around the country who have been dying for relief for 22 years, and the FCC could focus on that.

There are a number of different areas like that that I think could benefit, if the FCC focused on it.

Senator BOOZMAN. How has the agency focus on Internet regulation affected its allocation of resources?

Mr. PAI. Mr. Chairman, I think there's no question it has diverted a substantial amount of staff hours and financial resources toward what was essentially a discretionary project. I've often said that net neutrality was a solution in search of a problem. The Internet wasn't broken before the FCC tried to fix it.

But nonetheless, the agency has spent an inordinate amount of time producing what ended up being over 300 pages of regulations, which are going to have to be implemented and enforced in coming years. It is going to have to litigate those issues in the courts. That has detracted from the core purpose of the FCC under section 1, which is to realize the promise of communication services for every American.

So if we focused on rural broadband, if we focused on providing more resources to schools and inner cities, there are many things we could do to increase broadband deployment, but, unfortunately, net neutrality has been a diversion.

#### RURAL BROADBAND SERVICE

Senator BOOZMAN. Chairman Wheeler, following up on that, earlier in the year, all five FCC commissioners promised the Senate Commerce Committee that, by year's end, they would complete the rate-of-return USF reforms to allow support for standalone broadband. This is an effort that the commissioners support. This is something I think the subcommittee supports. These are the areas that we are really looking for so that we can make a difference.

Could you update us regarding the status of that effort?

Mr. WHEELER. Yes, thank you, Mr. Chairman.

First of all, I don't change one comma in the commitment that we will have this done this year. Three of the five Commission offices, mine included, actually sat down with the rate-of-return carriers to begin to work through the process of just how you build this new model to make sure that we are delivering broadband by rate-of-return carriers.

The challenge in this is that there are going to be puts and takes for individual companies, and we are trying to say how we keep our eye on the ball, which is to deliver broadband in rural areas, and, at the same point in time, not create exigencies that unnecessarily burden those companies that are trying to provide that kind of service.

I think we have made good progress. I expect that we will be moving toward a new model that we will release and propose shortly. But we are dedicated to the proposition, and we are going to get this done.

Senator BOOZMAN. And “shortly” is like the next month or two?  
Mr. WHEELER. It is by football season.

#### FEE STRUCTURE

Senator BOOZMAN. I can relate to that.

Let me ask you, despite rapid changes in the marketplace, the FCC has not substantially updated the regulatory fee structure. Will you commit to updating the way your agency collects regulatory fees to ensure the fees are equitably spread throughout the industries that the FCC regulates?

Mr. WHEELER. Yes, Mr. Chairman. That is an ongoing effort. What we are trying to do is we are trying to peg the regulatory fees to the expenses that are associated with them. And this is one of the things that is at the heart of this Universal Service Fund issue that we have been talking about, because broadcasters are paying for the administration of universal service, as well as other licensees that don’t participate in universal service. So how do you make sure that there is a relationship between that which you get charged and the services that you receive?

We have also moved to reduce the burden on small businesses. If your fee is less than \$500, you shouldn’t have to hire some lawyer or accountant for a couple thousand bucks to make your filing for you. So we have just eliminated that altogether.

But yes, to your specific question, changing how we do fees is a very important part of what we are doing.

Senator BOOZMAN. Commissioner Pai, would you like to comment on that?

Mr. PAI. Mr. Chairman, I share the chairman’s vision of making sure that our regulatory fee structure is calibrated to the realities in the marketplace as it stands. And without revealing nonpublic information, what I can say is that the Commission is on the brink of making additional progress toward that goal.

Senator BOOZMAN. Senator Coons.

Senator COONS. Thank you, Chairman Boozman. I appreciate the opportunity to continue some of this conversation.

If I could, I mentioned in my opening statement that I’m very interested in the incentive auction and the auction funds. So, Chairman Wheeler, if you would start? Congress authorized the FCC to conduct three different auctions in 2012. You are preparing for the third, the voluntary incentive auction.

Could you just go into a little bit more detail about why this is so much more complicated and how the aging IT infrastructure the FCC continues to operate with is, in some ways, a barrier to a successful auction; and whether you expect to meet the goals of start-

ing the auction, making spectrum that is badly needed ideally suitable for mobile and broadband by early 2016; and how you will ensure that broadcasters might be made whole, while maximizing the spectrum auction?

Mr. WHEELER. Thank you, Senator.

Senator COONS. Just a few questions.

Mr. WHEELER. That laundry list there kind of lays out exactly why this is a big undertaking.

I mean, I keep calling it a Rubik's cube, because what we are doing is we are going into the marketplace to buy spectrum from broadcasters. Then we will turn around and repurpose it, and sell it in a forward auction for the wireless carriers.

But that center ring in the Rubik's cube is where the real action takes place, because as the amount coming in varies, as somebody says, okay, I'm out of the auction now, you have to have real-time rebidding that determines what you are auctioning out there. That goes to your software point.

And I'll be very candid, sir, and say that when I walked into this job about 18 months ago, I sat down with the team, which is a terrific team that is doing this. I mean, this has never been tried before in the world, okay? The policy issues and how they are going through this is terrific, but I said, hey, folks, I used to run software companies, and I'm worried about this software component, and I'm worried about our ability to have the IT infrastructure that can do the job.

So I requested a 6-month delay, so that we could get that right. We are going to have this auction the first quarter of calendar year 2016. The software is going to work. I actually just had a briefing on it last week. We had a red team working on it. We are actually trying to run this like a software company. And I'm confident that we are going to have a successful auction in the first quarter of 2016.

Senator COONS. That's encouraging, and I would appreciate your talking a little bit further, if you would, about how proactive investments in dealing with aging infrastructure on the IT side and proactive investments, although significant, in a relocation may actually net positive to the taxpayer over time, but why some of the government accounting rules require you to do so in a lump sum upfront.

Mr. WHEELER. Thank you, Senator. Let's separate the real estate from the IT aspect.

On IT, we have 100,000 unique datasets in the agency that have grown kind of like topsy over the years. Somebody says, "Hey, I need," and something gets created. We have 207 different platforms that don't speak to each other. The maintenance of those alone is an expensive proposition.

If we can rationalize all of those, put them in the cloud, have a common platform, we are going to be able to reduce FTEs that support them and, even beyond that, the consultants you have to bring in to do the fix on this or the fix on that, but you need someone that is a specialist on this because you haven't built the program.

So for instance, we did an update using our new approach of our consumer site, that we brought in for a fraction of what the con-

sultant said he would charge us. And we want to do that across the whole agency. So that is on the IT side.

On the real estate side, when I did real estate deals, normally, you would just take the buildout cost and everything and amortize them over the course of the lease. Obviously, the owner of the building makes a little more in that process. The government says, no, that is not the way we do things. The way we do things is we pay them upfront, because that is what is best for the taxpayer.

It's going to cost us upfront \$51 million this year to save \$190 million over the course of a lease. I think that's a good investment, sir.

Senator COONS. Commissioner Pai has raised a concern that if we approve or authorize appropriations, that that will in some way distend future considerations of what the base budget is. Is that a legitimate concern? Is that a reason not to do this?

Mr. WHEELER. I don't think it is a reason not to do it. I think Commissioner Pai's idea that it should be segregated and flagged as this is just what it is, is a terrific idea.

Senator COONS. Commissioner Pai, any input you would like to offer on IT investments, the voluntary auction, or that last question about how to best ensure that taxpayers receive benefit and yet appropriators get a reasonable baseline going forward?

Mr. PAI. Thanks for your question, Senator.

Turning first to the voluntary incentive auction, I believe that we have to get this right. Congress gave us only one chance to get it right, so I think it is critical that we get it right instead of getting it done based on a particular deadline.

In terms of getting it done right, I have three general buckets of concern. One is that we tend to be making the incentive auction more complicated than it already is. As the chairman has aptly pointed out, it is sort of like a Rubik's cube, making it all fit together.

But there are different proposals on the table—for example, dynamic reserve pricing, the variable band plan, different spectrum blocks with different levels of impairment that people are going to have to figure out—that are going to make it even tougher for broadcasters and wireless companies to make the decision to come to the table and to come to the table with sufficient resources.

Secondly, I think there are also some pretty important technical questions that need to be ironed out. For example, as the chairman pointed out, how do we know the repacking software is going to work in crunch time? Similarly, what types of uses should be allowed in the guard band? That is something that engineers have to inform us about.

And then the third bucket are other factors outside of our control. We have heard from a number of carriers and from the capital markets that, given the amount of money that was unexpectedly raised in the AWS-3 auction, it might be difficult for some of the carriers to turn around on a dime and participate as robustly as we would like them to in the incentive auction.

So as to how each of these three items play out, I am agnostic in terms of the timing, but I think it is critical for us to sort them out, regardless of the timeline, to make sure that we manage to meet Congress' expectation for this auction.



Senator COONS. Terrific. Thank you.

Senator BOOZMAN. Thank you, Senator.

Senator MORAN.

Senator MORAN. Mr. Chairman, thank you and Senator Coons for having this hearing.

When I was in the position of Senator Coons as the ranking member, it had been 9 years since the FCC had testified in front of this subcommittee. Chairman Powell came that year, and we have had the FCC in front of us every year since. I think it is one of the most important agencies this subcommittee has jurisdiction over, and I thank you for conducting this hearing.

I thank the chairman and the commissioner for joining us.

Chairman Wheeler, over the last week, I've asked several people who come into contact in their business lives with the FCC as to what questions they would like me to ask of you. The ultimate and best suggestion was, whatever you do, ask for a yes or no answer, and I'm going to try to do that as often as I can, although now I am the one who is using up my time.

#### INCENTIVE AUCTION

Senator Coons asked a question about the incentive auction, and what I heard you say is that you are confident that the auction will occur early in 2016. That is a yes?

Mr. WHEELER. That is a yes.

Senator MORAN. My question that follows that then, you have been having meetings with broadcasters, and do you believe they now have the information necessary to make an informed decision whether or not to participate in that auction?

Mr. WHEELER. For the most part, yes, but we are not complete in the set of rules that we are developing. We'll get those done in the next couple months, and then they will have the information.

Senator MORAN. And do you have an ability at this point to predict how interested the broadcasters are in allowing their spectrum to be auctioned?

Mr. WHEELER. Oh, wow, predicting a market. I can say that there has been great interest. I've had major broadcast CEOs in my office saying that they are seriously looking at whether or not they would put their spectrum up.

I think that there is great interest in participating in the auction, but we won't know until we open the doors.

#### UNIVERSAL SERVICE FUND REFORMS

Senator MORAN. Likewise, Senator Boozman asked a question about rural broadband. I want to focus on the Universal Service Fund and the circumstance we find ourselves in.

First of all, I am pleased to see that we are moving in a correction toward the order that was entered prior to your arrival, Mr. Chairman. In your visit with me at the time of your confirmation, you committed to reforming the reforms. And I would like to see that continue expeditiously with a great deal of common sense and a sensitivity toward how rural the country is and how small many of those providers are.

One of the things that I would like to ask about this morning, though, is the Universal Service Fund. In so many instances, the

landline is no longer the desired option by the customer, and yet the Universal Service Fund collects money on that service, but we need that money to be used to deploy broadband in rural America.

What is the plan to transition the Universal Service Fund phone support to help support broadband, so that rural customers can access that broadband at comparable and as affordable rates as urban areas?

Mr. WHEELER. Thank you, Senator.

First of all, I want you to know that I will continue to live up to that commitment to you. I think I came right in and said this QRA stuff, which you and I had a long discussion about, is ridiculous, and it's gone.

Senator MORAN. Thank you.

Mr. WHEELER. And as I said earlier, we are in the process of looking at just how we put together a rate-of-return package. I agree that it doesn't make much sense to have the linkage between narrowband and broadband, and I know Commissioner Pai and I are in violent agreement on that point.

Senator MORAN. Nice to see.

Mr. WHEELER. The difficulty is, it is harder than just cutting the cord here, because we need to make sure that we are not just supporting existing broadband, but we are also providing funds to the unserved areas. And how we get that right is essentially what we are going through right now.

But we need to cover more of rural America, and we will do that, and we are doing it in this order, in the other order that Commissioner Pai and I both just voted favorably for a couple months ago, and we just actually took the action a couple weeks ago, we released \$10 billion to be spent over the next 6 years by 6 companies in the price-cap carrier arrangement. And then we have put in behind that a structure that says that those areas they are not going to serve, we are going to auction off. We are going to put auctions back to work, to say, okay, who wants to serve this area and what will it cost to serve it?

So one of the things we are going through, we are going through both changing the existing models that people are used to working with, and the problem, as I said before, that's gazintas and gazoutas that affects companies, but also changing the overall construct and saying it is not just your father's USF program anymore.

We want to look at bringing new people in. We want to look at having markets decide things by auction. And that is what we are committed to doing.

Senator MORAN. If the industry could come up with a plan to present to you, is there a way that that would be considered within the FCC?

Mr. WHEELER. Yes, sir. That was essentially what we were saying when the three commissioners' offices got together with them. Where you stand depends on where you sit, sir. We have to make sure that everybody understands they are sitting in the same place.

Senator MORAN. How long do you see a transition taking?

Mr. WHEELER. A transition to?

Senator MORAN. A transition to that form of broadband support?

Mr. WHEELER. I hope that we can have the plans in place this year.

Senator MORAN. Let me ask just about call completion.

Mr. WHEELER. Yes, sir.

Senator MORAN. What progress is or isn't being made?

Mr. WHEELER. So there are three components to call completion.

One is enforcement. We fined Windstream \$2.5 million. We fined Level 3 almost \$1 million.

The second is that they had this fraudulent activity going on where you would hear a ring even though the call wasn't being completed. And we have passed a rule, and Commissioner Pai and I again worked together on this, to make that illegal and to be able to take enforcement actions against that.

Then the third question becomes, okay, beyond that, how do we quantify what is going on? So we have a data inquiry out to the affected carriers right now, saying we want to know what happens about this. That will help us define what further steps we need to take.

Senator MORAN. When will you be able to share that report?

Mr. WHEELER. I hope, again, that is something that will be done toward the end of this year.

Senator MORAN. A busy year, Mr. Chairman.

Mr. WHEELER. Yes, sir.

Senator MORAN. Commissioner Pai, I intended to ask you to respond to anything you wanted to respond to. My time has expired. With the chairman's indulgence, Commissioner Pai, anything you would like to respond on to the questions I asked the chairman?

Mr. PAI. Sure. I will just build on briefly to the chairman's answer with respect to the mechanism for supporting standalone broadband.

#### STANDALONE BROADBAND

This is something that we long had a colloquy about. We've seen it for ourselves in Kansas.

The need is acute, and we need to get this done. I join the chairman in both my commitment to getting it done and commitment to finishing the project by the end of the year.

This is part of the reason why I proposed support for standalone broadband a couple years ago, because these carriers have a Hobson's choice. They either go it alone with standalone broadband without USF funds or they risk losing the customers.

And I'm glad that, on a bipartisan basis, we teed up a lot of these issues, including how the mechanisms should be structured, and there was a proposed rulemaking last June.

We teed up a number of other different proposals in that same NPRM, as it's called. But we need to be clear. We don't need a second path for carriers. We don't need an elegant mathematical model. We don't need a follow-up to QRA, which I'm grateful to the chairman for scrapping.

What I am increasingly optimistic about is that we can adopt targeted reforms to our rules, in particular, our part 36 and part 54 accounting rules. That regulatory tweak, which we have all the legal authority in the world to do, I believe could help some rate-

of-return carriers offer standalone broadband without effectively being penalized for it.

So the green shoots will hopefully blossom over the next couple months. But again, I stand ready to work with the chairman, with our other colleagues, and, of course, with you to make sure the mechanism is something that works for rural America.

Senator MORAN. Thank you, both, very much.

Senator BOOZMAN. Senator Lankford.

Senator LANKFORD. Thank you. Thank you, both, for being here.

#### DESIGNATED ENTITY PROGRAM

I want to follow up on these conversations about the designated entity program. And what is the potential right now? About \$3 billion in lost revenue.

Where does that stand for the future? What is the process at this point for reevaluating the program and how it's managed? And as you alluded to before, closing the loophole on this, what is the conversation right now?

Mr. WHEELER. Thank you, Senator. Let's parse it into two parts.

The first part Commissioner Pai spoke eloquently about, the reality that happened in the Advanced Wireless Services (AWS-3) auction. I can't find a lot to argue with on that. I think we are strongly of the belief that this was designed for designated entities.

How the rules were, in fact, used, followed by the bidders, is an item that is now finally before us, because yesterday was the day that opportunities to challenge those licenses closed, and we have like a dozen challenges to them. You may have noticed that the Wireless Bureau was slow in getting those out, because we wanted to make sure that we understood everything there was in those, so that we would be able to respond in this kind of situation.

We are now to the point where there are challenges to those licenses, and we will respond accordingly. That's what happened in AWS-3.

On the broader designated entity question, again, Commissioner Pai and I are in agreement. This program needs to be updated.

I was around when it was created in 1993. It has the right kind of philosophy, in that it is a mandate from Congress that we need to make sure that there are opportunities created for small businesses. And the problem is that the world has changed a lot since then, and our rules haven't.

So what we did a few weeks ago, probably a month ago now, was to put out a public notice, because we want to make sure that we have the record to support everything we do. We put out a public notice saying, here are the kinds of issues that got raised in AWS-3, give us input on that.

It is our intention that we are going to have a rulemaking that will be in plenty of time before the incentive auction, so that people will know what the rules are there, and change the structure of the designated entity rules to make sure that they meet the mandate of Congress and to make sure that they don't run afoul of the kind of things that we have seen happening.

Senator LANKFORD. Okay. Thank you.

Anything else you needed to add to that?

Mr. PAI. Senator, no. I can't improve upon that. We are working in common purpose, and I hope that some of the comments and changes that were teed up in the public notice will be adopted as fundamental reforms to this program.

Senator LANKFORD. Okay, that's great.

#### LIFELINE PROGRAM

Let's transition to the Lifeline Program. You all put some reforms in place over the last couple years. That program rapidly accelerated, and it is starting to be able to draw back some. It still has a distance to go.

What are the major reforms that are still pending, whether that be pending rulemaking or proposals, or whether that be changes that are in operation that you would seek?

My State of Oklahoma is one of the prime examples of that, and I have already mentioned to you as well, I am willing to work together to make sure that those individuals who are eligible for this receive it, and those that are not do not, as you walk through the process.

So what is pending at this point?

Mr. WHEELER. So we will bring out a reform of the Lifeline Program notice of proposed rulemaking in the next couple months. And it will address the kind of issues that you have mentioned here, and many others.

There was just a report by the Government Accountability Office in which they came out and said there has been great progress in helping to clean up this program and move it forward, but there aren't enough specific management goals. You are not shooting to these specific targets and saying, "Are you getting them?" We are going to be developing those, so that we can have a management-like approach to Lifeline.

As I say, we expect this notice of proposed rulemaking (NPRM) to start in the next couple months.

Senator LANKFORD. Is it your assumption, at the end of the day, that individuals would receive a phone for free under the Lifeline Program or that is a subsidized phone, there is still a cost that they incur per month as well?

Mr. WHEELER. That is specifically one of the questions that we are going to ask, and we will make the decision based on the record.

Senator LANKFORD. Okay. What is your assumption of the direction that is going? What is that conversation that is happening on that? Or do you need to save that for the record?

Mr. WHEELER. I have heard arguments on both sides. So what we are going to do is tee up in the NPRM this specific discussion and try and tease out from everybody and have people debating the various topics so we can have the best record to make that decision on.

Senator LANKFORD. There is also a conversation in my State of Oklahoma and multiple other States with a large native population that the subsidies were set up for individuals that are Native American but it seemed to be the assumption on tribal lands, to try to expand that out to tribal members. And it seems to be expanding well beyond what it was intended for.

In my State, there are more individuals on Lifeline than there are total tribal members in the State that get the tribal subsidy. So there is a problem with that, and I assume it's in multiple other States as well.

Is that part of the rulemaking?

Mr. WHEELER. One of the things I learned when I came to the Commission was that all of Oklahoma was tribal lands. I didn't realize that myself.

You pointed out to me the other day that tribal members carry an identification card that says, "I am a tribal member." I mean, the reality is that multiple years ago, during the Bush administration, when Lifeline was expanded to nonfacilities-based carriers, that a whole series of things were triggered that we now have to address. And that clearly is one of the obvious things, and I can assure you, sir, that will be in the NPRM.

#### OPEN INTERNET ORDER

Senator LANKFORD. Let me do one last question on this, and I'll try to be brief. We need to talk about some of the open Internet conversations. I understand the issues that are flowing through this and the opinions that are out there.

My question really circles around, why not a legislative fix for this? Why do a rulemaking? There are so many different exceptions that were built in, and the areas to say these 30 different parts you don't apply to this, and these 700 different rules you don't apply to this.

There seem to be so many exceptions, it looks like a round peg in a square hole in some places. When there was a congressional conversation about some of these same issues and how to resolve it, why do it through a rulemaking and try to adapt rather than wait on Congress to be able to respond to it?

And the second part of that is, is there any guess, at this point, in your budget, as you think about this long term, of the cost of litigation based on this, as you're beginning to prepare for that?

Mr. WHEELER. Thank you, Senator.

Legislation has been proposed in both houses, as you know. I read in the trades this morning that, in this body, Senator Thune and Senator Nelson are discussing how to come together on legislation. That is the prerogative of the Congress. And we would, certainly, bow to whatever decision the Congress makes.

In so far as the budgetary impact, we don't sit down and say, well, this is specifically what it is going to take to do this program or that program, with the possible exception of Lifeline where we do sit down and say we have 155 people who are dedicated to Lifeline. We don't have that kind of thing with open Internet, though.

Senator LANKFORD. So do you have any guess on litigation costs? When you start to dip into this, you have to know there will be tremendous litigation on the backside. Is there any way to estimate? Obviously, we have to look at that as well, what is about to happen in costs of litigation.

Mr. WHEELER. I don't have an estimate for that, sir.

Senator LANKFORD. Okay. More than \$10 million, do you think?

Mr. WHEELER. I don't have an estimate, sir.

It's a fixed cost. The reality is, we are not going to go out and hire Ted Olson or something like that, if that's what you're asking. It is a fixed cost. We have an appellate group inside the Office of General Counsel.

They are worrying about antenna sighting on one day, and they're worrying about USF appeals the next day, and they are worrying about this the next day.

Senator LANKFORD. Okay. Thank you.

#### ENFORCEMENT BUREAU CONSOLIDATIONS

Senator BOOZMAN. Chairman Wheeler, the FCC announced in March that 16 of the 24 enforcement bureau offices around the country would be closed. What impact will these closings have on the FCC's ability to address interference concerns?

Mr. WHEELER. Thank you, Mr. Chairman. It will improve our efficiency.

One of the realities that we have is that the offices were placed there 20 years ago in an entirely different era when radio frequency interference was not an issue. On average, less than 40 percent of their time is spent on RF interference issues.

We ought to be spending more time on the challenges to the future economy, which is a wireless economy, rather than trying to figure out if the local broadcaster has painted his tower.

So what we are proposing is a structure that will put electrical engineers in eight strategically located offices, so that they can then get out of those offices and deal with the issue, which is never in the office. It is out there.

And in addition, we get a lot of complaints from the industry that, hey, I tell you about some kind of RF problem and it like falls into a black hole. Back to Senator Coons' IT question, if we have the right kind of IT structure, I want to have a dashboard, so that you can say let me look up who is responsible for this, where it is in the status, and what the outcome is.

But we are not structured to that right now. We are structured to an era when you used to go and inspect broadcaster's records. They used to be in files at their offices. They're now online. We used to worry about whether towers were lit, and we have to ask the question, is that the broadcaster's responsibility or should we have 24 field offices out there doing that?

So we are trying to reallocate our resources to do a better job.

Senator BOOZMAN. So the resources that you save, then, are going to go toward interference, as opposed to across other enforcement areas or just within the agency itself?

Mr. WHEELER. We believe that we will be improving our interference enforcement. We believe we will save about \$9 million a year because—

Senator BOOZMAN. And that is going back into interference?

Mr. WHEELER. That goes into the general fund. It will be used, obviously, for paying for what will be increased cost to travel and this sort of thing. We want to have a coordinator at headquarters who oversees the whole thing. We want to build the dashboard. All of those, of course, will cost money.

Senator BOOZMAN. Right. So you're not committing to putting it in interference for sure. It is going in the general.

Mr. WHEELER. But the focus of the field offices is going to be interference.

Senator BOOZMAN. Okay.

#### RATE REGULATION

Commissioner Pai, under the Title II reclassification, if someone files a complaint with the FCC that an Internet service provider is charging unreasonable rates, isn't the FCC legally obligated to investigate the complaint and make a determination under section 201?

Mr. PAI. Yes, Mr. Chairman. That would be the FCC's obligation, which is why ex post rate regulation is explicitly on the table, as a result of the net neutrality regulations.

Senator BOOZMAN. Okay.

Mr. WHEELER. Can I just add one thing in there, Senator? I hope somebody files with that. I've said this with Commissioner Pai, and I've had this discussion before.

I hope somebody files with this, because if they do, I hope we will be able to, as a Commission, to take an action that makes it clear that ex ante rate regulation is not what we're after here, and that we will produce a decision that makes it clear that is not what we are trying to do here. And we are in strong agreement on the effect if not how to get there.

Senator BOOZMAN. Mr. Pai?

Mr. PAI. Well, Mr. Chairman, and with due respect to my chairman, I think the order says they won't get engaged in ex ante regulation. That means things like tariffs, developing a methodology for assessing costs—

Senator BOOZMAN. We are talking about consumer as well as interconnection rates?

Mr. PAI. Exactly. As I read this open Internet order, it explicitly permits ex post rate regulation both of the consumer-facing service as well as interconnection, under section 201 of the Communications Act.

Senator BOOZMAN. Chairman Wheeler, you're not interested in interconnection rates?

Mr. WHEELER. I am saying our goal is not to have rate regulation. In the 201(b) interpretations that some people have said, that this gives us some kind of ex post authority, I would like to be able to make it clear that it is not a rate regulation tool.

Senator BOOZMAN. Either with consumer or interconnection?

Mr. WHEELER. That we need it specifically for consumer rate regulation, okay? As we look at interconnection, I think we need to make sure that we make decisions based on what the facts of the situation are. I'm not trying to dodge your question, but I'm trying to say, absent understanding what the facts are, I think we need to wait for that.

Senator BOOZMAN. So I guess the question then is, would you have objection to Congress prohibiting the FCC from spending money on regulating rate charges for the broadband Internet access service, including those for interconnection?

Mr. WHEELER. So I think that one of the things that is most interesting is that, as I believe Senator Lankford pointed out, we forbore from a lot of sections in title II. There has been a concern



raised, well, okay, this Commission will stay out of that, but what about the next one? If Congress wants to come along and say that is off the table for the next Commission, too, I have no difficulty with that.

Senator BOOZMAN. Thank you, Mr. Chairman.

Senator Coons.

Senator COONS. Thank you, Chairman Boozman. Thank you for a broad and vigorous conversation about a lot of different issues. I want to take us back to access to broadband and making sure that we have an E-rate program and an USF that works.

You announced sweeping reforms last year to the E-rate program to bring broadband and Wi-Fi to schools and libraries while modernizing the program and eliminating funding for lower priority programs.

How will these changes to the E-rate program build on funds provided through the Connect America Fund to ensure every child has the ability to access the Internet or complete their homework, either at school or home? How is that actually going to lay out in reality?

Mr. WHEELER. Thank you, Senator, for the question.

Literally, we just closed the funding period. And there is about \$3.9 billion in requests that came in that we will be able to fund.

The exciting thing about what has happened this funding year is that, because of some of the good work that Jon Wilkins, our Managing Director, did here, he was able to identify a couple billion dollars in USF funds that were literally just sitting there, and without any impact on ratepayers, to be able to reprioritize those so that they could deliver Wi-Fi to the desk of the student.

It's one thing to connect the school, but getting it to the principal's office or the computer lab isn't enough anymore. It has to be to the desks.

We have always provided for that in the rules, but there was never any money, because it got sucked up by the first part, what is called category one. Now there is the ability to do that.

As a result of that, 20 million students are going to be connected at their desks that weren't before. And that is a significant achievement.

The other thing that is really important as well is that in connecting the schools, the worst situation for high-speed connectivity was in rural America. Now that is no great surprise, but there were unique challenges that exist in rural America that we addressed in the new rules so that we could close the rural fiber gap to get the connection to the schools so that it could get Wi-Fi to the desks.

As I say, the first iteration under the new rules has just happened.

Senator COONS. I suspect something you will find bipartisan agreement about is the need to continue with investment for rural access. Many don't think of Delaware as a rural State, but we have rural communities, and I hear regularly in Kent and Sussex counties in southern Delaware about their concerns about broadband access—libraries, schools, homes.

In my former role as county executive, I was responsible for a 911 call center and spent a lot of time on upgrading its response

and some of the transition from a predominantly landline world to predominantly cell phone world. I know that you have been working hard on some investments to try to strengthen it.

Commissioner Pai, could you explain a little bit more about the recent FCC rules on the topic, and any other 911 improvements you think are necessary?

Chairman Wheeler, the FCC budget, if I remember correctly, provides something like \$850,000 for a do not call registry for public safety answering points. If you could explain what that would be used for, I would appreciate a few minutes on 911 centers?

Mr. PAI. Thank you for the question, Senator. I think that our responsibilities are rarely cast into as sharp relief as when we are talking about public safety. The FCC has taken a number of steps recently to improve 911 functionality across the country.

For instance, we recently adopted some standards with regard to what is called location accuracy. Probably the most fundamental aspect of a 911 call is for emergency response to be able to figure out where is the person in need. That was increasingly difficult in this world where people are calling from cell phones, and it was difficult to figure out a location.

Thanks in part to bipartisan efforts on that issue, I think we are moving forward with standards that will hopefully hasten the day when anybody calling from any kind of device will be able to be found very quickly.

Additionally, we are kicking off an initiative to study the architecture of our public safety answering points (PSAPs) nationwide. Unlike a lot of countries, we have over 6,000 of those PSAPs sprinkled across the country, some small, some large.

I have visited the New York City PSAP, for example. It is massive, rows and rows of dedicated professionals. I have visited some PSAPs with just one or two people, and they have to be there at all hours of the day.

Is there some way to rationalize that structure to make sure that we deliver public safety value while also being careful stewards of taxpayer funds? That is something that the FCC is shepherding a conversation about.

Also, the FCC isn't just issuing mandates from up high. We are also leading by example.

In that regard, I want to thank the chairman for our recent announcement that the FCC, beginning on June 1, I think it is, will now be allowing FCC employees in headquarters here in Washington, DC, to themselves directly access 911, where previously they would have to dial an access code, such as 9.

You might think an access code isn't the biggest deal, but in the press of an emergency, it is not one of the things that people think about. They just know the number 911.

So I think we're going to be leading by example. Hopefully, other Federal agencies, other than the private sector entities, will do the same. Those are just three of the things that spring to mind.

Mr. WHEELER. Can I just pile on there and give credit where credit is due on that last item? That was entirely because Commissioner Pai brought this issue to us and championed this issue.

He has also done an outstanding job working with hotels around the country, to get them to voluntarily do the same thing.

Mr. PAI. I'm very grateful to the chairman for the kind words. In return, if he decides to move the FCC to Wichita, I will support him in that endeavor to save money.

Mr. WHEELER. We can agree on only a few things.

Mr. PAI. I thought I would push the envelope.

Senator COONS. Wichita? Wonderful.

Mr. PAI. If planes, trains, and automobiles go there Senator—

Senator COONS. Not so cost-effective.

If you would, the do not call registry?

Mr. WHEELER. Oh, I'm sorry. Yes, so we need to create—PSAPs get robocalled.

Senator COONS. I know.

Mr. WHEELER. That's what the issue is. And it wastes the time of these people that Commissioner Pai was talking about. We need to have a registry for that.

The difficulty that we are facing is Congress said create this registry, and it's a terrific idea, but we are asking you for the money to fund it.

Senator COONS. Right.

One last question, if I might, Mr. Chairman, about positive train control. This is a complex and difficult public safety investment, improvement. Can you just give us an update on progress toward the deadline, and what the FCC can or should be doing to help expedite the process so that it is possible to meet the deadline for a number of infrastructure investments and processes that need to be done?

Mr. WHEELER. Thank you, Senator.

There are two parts to positive train control. One is the spectrum, and the other is the placement of the antennas that will control that spectrum.

We have been opening up spectrum transferring. So for instance, with commuter lines, we recently eased their power restrictions so they can push out more power over the same spectrum using fewer poles. For Amtrak, we have new spectrum in the Northeast corridor now, and we did some spectrum license transfers last week. So that's kind of the spectrum side.

Then there is the process that is required for us to carry out under the environmental protection and historical protection acts, that we create a structure for Native American communities to be able to review the placement of the poles that hold the antennas.

When I walked in, there was a huge problem because it was not structured in a way that could handle the terrific input that was coming from the railroads. I'm happy to say that, thanks to the cooperation and hard work with tribal leaders, we now have in place a process that will handle 2,800 requests every 2 weeks. And it is, frankly, a process that the railroads have not been able to fill. We are at about 27 percent capacity right now, which is good news. I'd rather have excess capacity; I'm not casting aspersions here.

And so I think that we are making some real serious progress on PTC.

Senator COONS. Okay.

Thank you, Mr. Chairman.

Senator BOOZMAN. Senator Moran.

Senator MORAN. Mr. Chairman, thank you very much.

First of all, I want to thank the Commission. I mentioned in a hearing, the last time we were together, which I think was in the Commerce Committee, an E-rate case that had been pending since 2011. Within a week of that hearing, the case was settled in the Kansas Board of Regents.

Mr. WHEELER. Isn't it amazing how those kinds of things happen?

#### CROSS-BORDER COORDINATION

Senator MORAN. Let me turn to a letter that I and 28 of my colleagues recently worked on, including Senator Coons, related to Mexican border spectrum issues. There is significant public well-being at stake here along that border. The effort here is to implement a 2012 agreement that the Mexican Government entered into.

My question is, does your budget reflect the necessary resources? And do you have the necessary expertise critical to get this issue resolved and to assist the Mexican Government in addressing this issue?

Mr. WHEELER. Thank you, sir. I think the answer is yes. I think I've got some good news for you on that, too.

As you know, we are in ongoing negotiations with the Mexican Government. And I believe that we are now to a point where we have reached a structure where there can be rolling approvals, if you will. So we bring forward and say here are a group of licenses we have to worry about, and they deal with those. We can deal with them on that kind of basis rather than just dropping a whole load of hypotheticals on the table and say deal with that.

So our international bureau has been doing a great job on this, and I think that we have crested the hill, sir.

Senator MORAN. So the new standard is that if I raise a topic, it is resolved within a week?

Mr. WHEELER. Well, sir—

#### FCC BUDGET

Senator MORAN. Let me turn to the diversion of money. I think Commissioner Pai mentioned this in his testimony.

The President's budget requests of diversion of \$25 million directly from the Universal Service Fund for the purpose of identifying improper payments, waste, fraud, and abuse. I consider those dollars within the Universal Service Fund pretty scarce and important.

Based upon what I know about the Inspector General's report, in 2008, this is just an example, the IG predicted to Congress that they would find \$608 million in potential improper payments. As I understand it, the number after this onerous audit was a mere \$79,000.

My questions are: What does FCC have to indicate that regulators would find \$25 million of waste, fraud, and abuse? In other words, to allocate the money, one would think you're going to get a greater return than the money spent for the Universal Service Fund. And secondly, wouldn't it be better to take those dollars from the general operations budget than to take them out of the Universal Service Fund?

Mr. WHEELER. Thank you, sir. You just gave me an idea. I frankly hadn't thought about comparing ins and outs.

I know that in the last 6 weeks, we fined AT&T over \$10 million on a Lifeline fraud. So I can virtually guarantee, but I will submit for the record, the specific ability to recapture those funds.

The point that I was trying to make earlier, Senator, is that we have 155 people who are working on universal service. It is about 10 percent of our employees. We are in a situation where we are cutting employees.

How do we hold universal service management, enforcement, and appeals harmless from budget cuts? I think the model was established by Congress when you said to us the point you just made about inspector general. We want inspector general activities on waste, fraud, and abuse to be paid for not by the FCC, but by the Universal Service Fund.

The database that we had to build to go after that waste, fraud, and abuse was paid for out of the Universal Service Fund, as it should be. It is the same kind of concept where the cost of managing the auction is paid for out of the auction proceeds. I think it is just good business to associate expense with revenue.

I also think it is good equity for the ratepayers. You were asking me previously about how we were setting the rates. We ought to establish that these are the benefits you get, and this is what you pay, but not load in the costs for somebody else into what a broadcaster has to pay, for instance.

But what is really important I think to mention here is that those 155 people, that \$25 million, we have to pay that one way or another, okay? It is not going to go away. So what I am suggesting is that there should be a dollar-for-dollar reduction in the general fees charged by the agency, so that we can ensure that universal service is protected from any FTE reductions or any of the other things, and is paid for out of the funds generated by it.

And yes, sir, I can virtually guarantee—I will bring you years of history that it has always been paid for by enforcement.

Senator MORAN. Let me make one final point and then turn to Commissioner Pai for any response he would like to make.

I have asked you for, I think I submitted it in writing, ITT infrastructure questions at our Commerce hearing in March. I will re-submit those today and look forward to it.

Commissioner Pai.

Mr. PAI. Sorry, on?

Senator MORAN. Anything, in particular, on my question about the \$25 million?

Mr. PAI. Thanks for the question, Senator. I think my concern is twofold.

First, we should think about what the Universal Service Fund actually is. This is basically a tax on consumers. Any consumer with a phone bill pays into the Universal Service Fund. So by definition, if you extract \$25 million from that fund, the consumer is going to have to make up that gap eventually. So to accommodate this \$25 million transfer, or any other further transfers in future years, if this one were to be approved, the tax on consumers would have to go up to cover that gap.

Secondly, in terms of how the money is going to be spent, I agree that enforcement of the rules regarding Universal Service Fund is absolutely essential. Since I started at the FCC, I've been talking about the need for more effective enforcement of our Lifeline rules, making sure that people don't take advantage of the system.

But we need to reprioritize, in my view, the FCC's operations in Washington, to streamline our operations, make ourselves more efficient, to free up funds to go after that kind of enforcement, rather than diverting it from the Universal Service Fund. My concern is that this is essentially the camel's nose under the tent, so to speak. I would prefer that we keep the two activities separate, for the sake of consumers.

Senator MORAN. Commissioner, thank you very much.

Mr. Chairman, thank you for the opportunity to have a conversation today.

Senator BOOZMAN. Senator Coons.

Senator COONS. I simply wanted to thank our witnesses for your service and for your testimony today, and for the very businesslike way that you approach both the solutions to the challenges in front of you and to working together. Thank you.

Senator BOOZMAN. Thank you, Senator Coons.

Thank you all for being here. We had a good hearing, and I think we really do have some profound disagreements. And yet, we really do have some areas that we all agree on one thing.

As I go out and about throughout the State, and I know it is true of my colleagues, in the old days when you talked about infrastructure, you talked about roads and bridges, water, and electricity. Now infrastructure, what you're dealing with, broadband connectivity, is so very, very important.

So I think that we are all agreeing that this needs to get done. And, certainly, we are looking for ways to help you get it done.

Again, that is so important not only for rural America, which we are concerned about, but we are also very concerned about urban America, the whole country.

So we appreciate you being here.

The other thing, before I go on, is I want to thank you, but I also want to thank your staff. I know they have worked really hard in getting you all prepared, as have our staff.

Mr. WHEELER. We want to thank your staff, sir.

Senator BOOZMAN. Exactly. Our staff also, and we do appreciate them.

#### ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions, the hearing record will remain open until next Tuesday, May 19, at noon, for subcommittee members to submit any statements or questions to the witnesses for the record.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

## QUESTIONS SUBMITTED TO HON. TOM WHEELER

## QUESTIONS SUBMITTED BY SENATOR JOHN BOOZMAN

*Question.* The Spectrum Act established the Broadcaster Relocation Fund to cover the costs of moving broadcasters to different channels after the incentive auction.

What steps are you taking to minimize relocation costs to ensure that the \$1.75 billion in the fund is sufficient?

*Answer.* At this point, we have no reason to believe that the \$1.75 billion Broadcaster Relocation Fund will be insufficient to cover broadcasters' relocation costs. We are taking appropriate measures to disburse funds as fairly and efficiently as possible to ensure the sufficiency of the fund. We have proposed to optimize the final broadcaster channel assignments to minimize relocation costs by: (1) maximizing the number of stations assigned to their pre-auction channels; and (2) avoiding reassignments of stations with high anticipated relocation costs, based on the most accurate information available.

*Question.* Do you believe that 3 years will be enough time to move all of those stations?

*Answer.* Yes. The Commission engaged Widelity, Inc. through a competitive process to evaluate and provide time and cost estimates regarding the post-auction broadcaster transition. They concluded that "[t]he process will be complex, but we feel that it can be achieved." The Commission agreed and found that a phased, 39-month transition period (a 3-month period during which broadcasters will file their construction permit application followed by a 36-month period consisting of varied construction deadlines) is likely to ensure a successful transition for all broadcasters. We fully intend to make initial allocations quickly to help broadcasters initiate the relocation process, and the Commission is committed to working with stations to ensure a smooth transition. Stations may seek a 6-month extension if necessary in order to complete construction.

*Question.* Are there any protections in place that would prevent broadcasters who didn't participate in the auction from having to pay out-of-pocket move expenses when they are reassigned a new channel?

*Answer.* Yes. Broadcasters who do not participate in the auction but who are assigned to a new channel in the repacking process will be eligible for reimbursement of their reasonably incurred costs from the Reimbursement Fund.

*Question.* What costs are you being "told to carry out" related to broadcaster relocation that are not supported by Public Law 112-96? Please specify why the administrative costs associated with broadcaster relocation are not part of the administrative costs for which the Commission may be reimbursed for "carrying out" the incentive auction and its various components.

*Answer.* Section 6403(c)(2)(C) requires that the forward auction proceeds must "be sufficient to cover the costs incurred by the Commission in . . . making any reassignments or reallocations under" Section 6403(b)(1)(B), which includes the relocation of broadcasters post-auction. Consistent with Section 6403(c)(2)(C) of the Spectrum Act, the administrative costs that the Commission will bear associated with the broadcaster relocation post-auction will be covered by forward auction proceeds as part of the Commission's administrative costs of conducting the auction.

*Question. Broadband Mapping.*—Wasn't the responsibility for creating and maintaining the broadband map assigned to NTIA as a part of the American Recovery and Reinvestment Act?

When and why did the FCC assume responsibility for the map?

What is the annual cost for the FCC to administer and manage the map?

ARRA appropriated \$350 million to develop and maintain the map. How much of that money has been spent? Please provide specific details on how that money been spent.

*Answer.* The National Broadband Map has been populated by data from the National Telecommunications and Information Administration's (NTIA) State Broadband Initiative (SBI). Both the National Broadband Map and the SBI program were funded by ARRA. The vast majority of the \$350 million appropriated under ARRA to develop and maintain the map was used by NTIA on the SBI grants to obtain the data from the states that allowed for the creation of the map.

Pursuant to a Memorandum of Understanding (MOU) between NTIA and FCC in October of 2009 (as amended in April 2010), NTIA agreed to provide the FCC with up to \$18.65 million in ARRA funds to develop the National Broadband Map. Pursuant to the terms of its MOU with NTIA, the FCC spent \$15.88 million in ARRA funds on the map effort through the map's deployment online in February of 2011. The FCC's expenditures included funds for IT infrastructure, operations and maintenance, and funds to support FCC personnel and contractors to create, operate and

maintain the map. Since the map's deployment, the FCC has managed the costs of the map and has worked pursuant to a reimbursable agreement with NTIA that uses non-ARRA funds. However, the FCC lacks a continued funding source for the map due to the expiration of its most recent agreement with NTIA at the end of May 2015.

The FCC recognized the importance of having the data behind the map and in 2013 adopted rules to collect substantially similar data directly from broadband providers. Such data could be used to populate the map going forward. As our Managing Director has testified before Congress, the FCC is in the midst of a modernization of all of its IT systems to reduce costs and improve reliability and performance. We are currently evaluating costs in the context of our overall IT budget and modernization to maintain the map as it exists today, to update the map with data from the FCC's data collection, or to rebuild the map to update the now-6-year-old technology.

*Question.* Chairman Wheeler, at the May 12 hearing, you testified that closing 16 field offices will save \$9 million, and that you want to commit some of the savings to have a coordinator at headquarters and create a dashboard to help the agency better guard against interference problems.

What is the estimated cost of those two items and is the remainder of the \$9 million savings?

Will any of the FTEs or funds saved by closing field offices be reallocated to support other functions of the Commission, such as the Enforcement Bureau?

Answer. The recommended "coordinator" position in headquarters is one of five management positions in our recommended modernized organizational structure, titled the Field Director. Therefore, the estimated cost of this position—approximately \$190k with base pay and estimated benefits—is already included in the \$9 million savings figures and will not erode any of the \$9 million. Overall, we are recommending streamlining the management structure from 21 to 5 individuals, including the Field Director in headquarters. We found an overabundance of managerial positions. The average field location has just 4.5 full-time employees ("FTEs") (with many having just 1 or 2 FTEs). Yet for every 4 field employees, there is 1 manager. Additionally, we saw this fragmentation driving variation in our processes and output.

We also plan to implement a dashboard to track our progress on complaints for escalation and accountability purposes. The ability to understand the status and outcome of investigations and inspections in a more "real-time" basis will be in addition to other adjustments to our IT system. For instance, we are investigating adding functionality to track deployed equipment, travel requirements, and Field activity productivity metrics. Our goal is for the Field Director to own and maintain this dashboard and use it to review the performance the three regions and eight offices. We are still in the process of developing cost estimates for these improvements; however, they will be updates to our current case management system, Enforcement Bureau Activity Tracking System (EBATS), which is already in place.

The top priority use of savings will be reinvestment in our restructured field organization, including such areas as IT upgrades, equipment modernization, and agent training. Any residual savings will be incorporated into our general operating budget to address the most important ongoing needs across the Commission as we continue to work to fully deliver our many statutory missions under a constrained budget.

We have taken seriously guidance from our congressional oversight and appropriations committees to operate more efficiently. We have developed this plan in accordance with this goal, and believe once implemented it will update and overhaul outdated management models, realize significant cost savings, and make the FCC a 21st-century agency.

*Question.* Greater deployment of wireless broadband is a goal we all share. However, one obstacle to meeting this goal is that the siting process on Federal lands is extremely cumbersome. Under Section 6409(b) & (c) of the Middle Class Tax Relief Act of 2012 and various Executive Orders and Presidential Memoranda, the Federal Government has been tasked with streamlining the siting processes for wireless broadband deployment on Federal lands and properties. Thirty percent of America's landmass is owned or controlled by the Federal Government, but to date, siting wireless facilities on these lands and properties has been met with high costs, delays, and moratoria.

What steps is the FCC taking to make this process more efficient?

Answer. The FCC has actively participated in the working group that was formed to implement the 2012 Executive Order. This working group has produced, among other things, a uniform application for siting communications facilities on Federal lands and buildings, and it is developing a model categorical exclusion for commu-



nications facilities under NEPA. The FCC's contributions have helped ensure that both of these documents are appropriately tailored to the unique circumstances of wireless facilities. The FCC is also participating in the Broadband Opportunity Council that was established by Executive Memorandum earlier this year. The FCC has no authority over Federal agencies' decisions regarding use of their own lands. Our role is to work with landholding agencies to educate them about wireless communications and facilities, as well as to encourage them to consider successful models.

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QUESTIONS SUBMITTED BY SENATOR JERRY MORAN

*Question.* In 2012 the Department of State, working with the Federal Communications Commission, reached a long anticipated agreement with the Mexican Government regarding spectrum sharing in the 800 MHz band to ensure both countries' operators would be permitted to maximize use of this spectrum band without unnecessary interference. Unfortunately the Mexican Government has yet to act upon the responsibilities assumed by Mexico in the agreement. As you know, the domestic benefits of this agreement are completely dependent upon Mexican action—and as a result are at a standstill almost 3 years following the signing of the Protocol. What is the FCC doing to resolve this international standstill? How has the FCC coordinated with the Department of State to resolve this issue? When can Congress expect to see progress by the Mexican government to ensure that the hoped-for public and economic benefits are fully realized? Please provide more detail as to the process, including benchmarks and timelines the FCC and Mexico are attempting to establish to eliminate the standstill we face today.

What is the FCC doing to resolve this international standstill?

Answer. While negotiations with Mexico have not progressed as quickly as we would like, the FCC has engaged with our Mexican counterparts since 2012—including throughout Mexico's telecommunications regulatory reform which took place in 2012–2014—to realize the benefits of the Revised Protocol. Subsequent to the establishment of Mexico's new regulatory agency, the Federal Telecommunications Institute (IFT), in September 2013, FCC staff worked with IFT staff to reestablish relationships with the appropriate contacts and team members responsible for 800 MHz issues in Mexico.

Since 2013, the FCC, in coordination with the State Department, has held several in-person meetings both in Mexico City and in Washington with IFT staff and Commissioners, as well as video conferences. Since 2014, FCC and IFT staff have worked together diligently on various 800 MHz related policy and legal issues and have held regular task force calls. FCC Chairmen and Commissioners have repeatedly raised the 800 MHz rebanding issue during their meetings with Mexican officials, including the ITU Plenipotentiary in Korea in October 2014 and most recently at the GMSA Mobile World Congress in Barcelona, Spain in March 2015. The FCC has been waiting for IFT to issue new licenses to incumbent Mexican licensees that need to move out of the portion of the 800 MHz band spectrum that will be used for public safety. During the most recent call with IFT staff on April 28, 2015, IFT staff indicated that they are in the process of finalizing the necessary steps to issue new licenses to authorize the clearing of the 800 MHz band.

*Question.* How has the FCC coordinated with the Department of State to resolve this issue?

Answer. The FCC has coordinated closely with State Department on these issues since the signing of the Revised Protocol with Mexico in 2012. The State Department has been invited to and has participated in the in-person task force meetings in Mexico City and at the FCC with IFT staff, as well as teleconferences and videoconferences with Mexican counterparts.

*Question.* When can Congress expect to see progress by the Mexican Government to ensure that the hoped-for public and economic benefits are fully realized?

Answer. The FCC has been assisting IFT as much as possible, but Mexico does not have an accurate database of its licensees like the FCC does. IFT staff have been collecting data from their licensees and reporting the information to the FCC so that our Transition Administrator can plan the relocation for both countries. While Mexico is making some progress, the FCC has emphasized to IFT the importance of moving forward on this issue as quickly as possible. One of the problems facing Mexico is that it has some government licensees whose relocation is more complex. All incumbent licensees must be issued new licenses in different spectrum before relocation can begin. IFT indicated recently that it is working towards issuing new licenses and taking the necessary steps to clear the 800 MHz band, but has not committed to any specific dates.

*Question.* More than 900 small cable operators across the country rely upon a single buying group, the National Cable Television Cooperative (NCTC), to purchase the programming they offer their customers. Existing law clearly indicates that Congress intended to prevent programmers from charging “buying groups” discriminatory rates. However, due to problems with the manner in which the FCC drafted its rules, the NCTC does not enjoy the protections Congress intended. This problem was brought to the FCC’s attention in June of 2012. In October 2012, the FCC issued a rulemaking tentatively concluding that its definition of a “buying group” needs to be modernized to fix this problem and sought comment on this matter. The issue has now been before the FCC for more than 2 years, and last year the Small Business Administration has urged the FCC to act. What is the status of this proceeding? Does the FCC intend on examining this rule this year? Why or why not?

*Answer.* The Commission sought comment in 2012 on a variety of issues related to our program access rules, including whether to modify the current definition of “buying group.” The National Cable Television Cooperative (NCTC) sought the change because its existing practice excludes it from the definition, and thus, NCTC claims it is unable to avail itself of the complaint process under our rules.

Although the Commission made a tentative conclusion to potentially modify the “buying group” definition in the Further Notice, the record in the proceeding indicates that a rule change is not necessary for NCTC to qualify as a buying group, and it appears that this is more of a dispute over ultimate liability than a regulatory issue. NCTC previously complied with the requirements of the existing definition; past and recent filings have not demonstrated that it is burdensome to satisfy these requirements, should NCTC choose to do so.

If NCTC has information that might shed new light on this conclusion, I invite them to add that analysis to the record and to share their findings with Bureau staff.

*Question.* According to the agency’s fiscal year 2016 budget request, the FCC has not requested additional full time employees. Can you please describe in detail the composition of the FCC staff by position type? How many attorneys does the FCC employ? How many economists does the FCC employ? How many engineers does the FCC employ? How many administrative staff does the FCC employ? How has that changed over the past 5 years? Please provide detail on other positions that may not be included in the questions above.

*Answer.* The FCC employs 1,686 employees. The current breakdown of FCC employees by type of positions is as follows:

- 592 Attorneys
- 60 Economists
- 256 Engineers
- 149 in administrative offices/positions
- 629 employees in other occupations, such as analysts, specialists, IT, and accounting/finance positions

Over the past 5 years, the total number of employees has declined from the FCC’s staffing levels in fiscal year 2010 to the present. For comparison, the fiscal year 2010 figures by type of position were as follows:

- 544 Attorneys
- 57 Economists
- 270 Engineers
- 201 in administrative offices/positions
- 760 in other occupations, such as analysts, specialists, IT, and accounting/finance positions.

*Question.* One of the goals of the 2011 Connect America Fund proceeding was to transition universal service support away from voice services to broadband service for unserved and underserved Americans. Last year, 130 Members of Congress wrote to the FCC urging progress on universal service updates that are tailored for small companies so they could receive support for offering stand-alone broadband, which consumers are increasingly demanding. Just this week, 61 Senators wrote yet another letter to ask about the FCC’s plan to transition to a broadband support system. I understand that the FCC has sought comment on such updates at least three times now in the last few years. When will the FCC make additional progress in this regard?

*Answer.* As I explained at the March 18, 2015, Senate Committee on Commerce hearing on FCC oversight, resolving the issue of ensuring that the universal service program better reflects today’s marketplace and technology in areas served by rate-of-return carriers will require all the stakeholders to work together and make hard decisions to reach consensus on the best path forward. Everybody agrees that the goal of any changes should be supporting broadband in rural areas, but so long as

the recipients of USF funding remain divided, achieving those goals remains problematic.

I recognize the substantial time, effort, and resources that have been invested in this effort to date by stakeholders in the rate-of-return community, and I am committed to finding a path forward by the end of the year. It is important to have a solution—or set of solutions—that creates the right incentives to deploy modern networks throughout rural America, meets the Commission’s overarching policy objectives, and has the widespread support of the rate-of-return carrier community. I remain hopeful that we will be able to achieve such a solution in order to deliver successfully on our shared goal of more robust broadband throughout rural America.

*Question.* The FCC is at a 30-year low for Full-Time Employees, yet the budget request is at a historical high. In fact, this is the Commission’s largest budget request in the history of the agency. What is driving such a large budget request? Specific to the FCC’s lease expiring—I understand there are two options, either to move to a new location or restack. What is most cost-effective, moving or restacking? To the extent there are one-time budget items—such as the office move or restacking—can the committee expect the budget to return to baseline levels after the one-time expense?

*Answer.* As noted in your question, the FCC’s fiscal year 2016 budget request represents a marked increase over the fiscal year 2015 appropriated level of \$339.8 million, and the auctions cap would be \$11 million more than we received last year. These are well considered requests that reflect necessary operational demands. For fiscal year 2016, the Commission has been forced to adjust its costs upward to manage and execute activities leading to the termination of our headquarters lease in 2017. Over 70 percent of our requested increase supports “unavoidable” costs such as the restacking and move, inflationary increases, and the Office of Inspector General base increase. Another 25 percent of the increase relates to important IT investments that include replacing the FCC’s legacy infrastructure with a managed IT service provider to generate efficiencies and savings; rewriting legacy applications as part of a modular “shift” to a modern, resilient cloud-based platform; and improving the IT resiliency of the FCC enterprise.

With regard to the question of whether the move or restacking is most cost-effective, please note that the move and the restacking are not equivalent. There are two potential options: (1) move to a new location or (2) renovate the existing building floor by floor to achieve the space reductions, which will also necessitate the agency to move into a temporary facility and relocate the employees back when each floor is completely renovated. The existing FCC space requires major infrastructure changes to include but not limited to electrical, plumbing, IT cabling and wireless technology, and physical security requirements. The most cost-effective solution is determined after a full and open competition procurement action is evaluated. The incumbent will have an opportunity to provide a proposal based on the revised FCC space requirements.

With regard to future budget requests, it is important to note that we will use the move as an opportunity to create greater cost savings and efficiencies by significantly reducing the Commission’s footprint and instituting new management techniques that encourage greater use of shared space. Current projections show net savings of over \$100 million over the life of our new post-2017 lease. Furthermore, the FCC estimates that the IT investments it requests will realize cost savings between 2 and 3 million dollars by fiscal year 2017 and an additional five to \$10 million over the next 5 years. Currently, the Commission is developing its fiscal year 2017 budget request and as mentioned in the fiscal year 2016 congressional budget we expect to request additional funds for the move or restacking initiative in fiscal year 2017 of approximately \$19.6 million. The Commission’s normal practice when developing its annual budget request is to return to the baseline amount if no additional initiatives are requested.

*Question.* You have characterized it as a “myth” that the FCC plans to regulate retail prices in response to consumer complaints, but you specifically refrained from forbearing from Section 208 of the Communications Act so that consumers can bring a complaint “in the event that a carrier violates its common carrier duties.” Are you assuming that consumers will never ever bring complaints about their broadband rates? Do you believe the FCC has the authority to regulate broadband rates? Does the FCC plan to regulate broadband rates?

*Answer.* Section 208 sets forth the well-established process by which consumers and companies can bring any complaints (e.g., for violation of the prohibitions on blocking, throttling, and fast lanes) to the Commission for resolution. Thus, Section 208 is necessary to ensure full compliance with the law and Commission regulations. In fact, Congress specifically precluded the Commission from forbearing from Section 208 in the commercial mobile wireless context. I have repeatedly stated that

there will be no regulation of retail broadband rates, and retaining Section 208 does not change that.

*Question.* One concern that many smaller broadband providers have shared with me is the burden of complying with new rules and regulations on their small companies with relatively few employees as a result of the Commission's decision to reclassify broadband as a Title II service. I share their fear that this burden may disproportionately affect small businesses, resulting in increased costs to and reduced investments by the smaller Internet service providers that are primarily responsible for connectivity for rural Americans. The FCC recognized this burden when it created a temporary small business exemption of application of the transparency requirements. That exemption expires on December 31, 2015. What consideration have you given to making the small business exemption permanent? Will you be making it permanent? What other steps is the FCC taking to protect small businesses from suffering from a regulatory burden that should not be intended to affect them, one they cannot absorb, and one that could potentially eliminate a competitive marketplace by forcing out small businesses from the broadband marketplace in favor of large businesses who can absorb the costs of the regulatory burden?

*Answer.* The Open Internet Order temporarily exempted providers with fewer than 100,000 broadband connections from complying with the enhancements to the transparency rule. I heard from many small businesses over the course of the rule-making—farmers, musicians, and small online retailers—many of whom spoke out in favor of strong rules to protect an Open Internet. The Order was carefully crafted to address the concerns both of small businesses at the edge of the network, as well as small broadband providers. On June 22, 2015, we released a public notice to seek input on whether and how to address that exemption on a permanent basis.

*Question.* Through its National Broadband Plan released by the FCC on March 17, 2010, the FCC seeks to free up and deploy 500 MHz of spectrum by 2020. Of the targeted 500 MHz, the FCC seeks to reclaim at least 120 MHz from the 600 MHz band currently allocated to television broadcasters. The FCC's Band Plan provides flexibility in how much spectrum is cleared with spectrum clearing targets ranging from a high of 144 MHz to a low of 42 MHz. Most current discussions involving the FCC's spectrum clearing targets associated with next year's scheduled broadcast incentive auction seem to narrow the FCC's target clearing range from a high of 126 MHz to a low of 84 MHz. Can you share your current thinking on the FCC's targeted spectrum clearing goal and how you plan to achieve this goal?

*Answer.* The incentive auction is designed to allow market forces to determine how much spectrum will be recovered. The initial clearing target will be determined by the level of broadcaster participation. We are committed to designing an auction that makes it simple for broadcasters to participate, as well as providing broadcasters with the information necessary to make this important business decision. To that end, we have engaged in significant outreach to broadcasters, including dozens of broadcaster meetings at the Commission and locations across the country and broadcaster-focused Webinars, to educate them about the opportunities presented by the auction.

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#### QUESTIONS REGARDING FCC'S IT SYSTEMS

*Question.* Describe the role of the FCC's Chief Information Officer (CIO) in the development and oversight of the IT budget for your agency. How is the CIO involved in the decision to make an IT investment, determine its scope, oversee its contract, and oversee continued operation and maintenance?

*Answer.* The FCC's CIO is situated within the Office of Managing Director and works directly with both the Managing Director and the Chief Financial Officer. The CIO provided significant input to determine the FCC's IT investment, which is reflected in the fiscal year 2016 budget. All requested programmatic funding increases, apart from the restacking/move of the FCC, are IT-based. We continue to strengthen the IT staff by hiring more experienced personnel, bringing in highly-skilled detailees from other agencies to oversee implementation, and decrease the number of contractors.

*Question.* Describe the existing authorities, organizational structure, and reporting relationship of the Chief Information Officer. Note and explain any variance from that prescribed in the newly-enacted Federal Information Technology and Acquisition Reform Act of 2014 (FITARA, Public Law 113-291) for the above.

*Answer.* The FCC has been moving in the right direction to ensure that our CIO has the support and level of responsibility contemplated by Congress in FITARA. Our CIO works directly with the CFO and Managing Director to develop the budget, and he has access to enhanced procurement staff with an IT focus. In fact, the FCC

has an outstanding CIO, and we hope that by building his department and strengthening and empowering his staff, we will serve as a role model for IT good governance. In addition, our CIO has a good working relationship with the Federal CIO and is in step with efforts to modernize the approaches of the acquisition and implementation of IT in government.

*Question.* What formal or informal mechanisms exist in your agency to ensure coordination and alignment within the CXO community (i.e., the Chief Information Officer, the Chief Acquisition Officer, the Chief Finance Officer, the Chief Human Capital Officer, and so on)?

*Answer.* Given the compact nature of the FCC, the Office of Managing Director (OMD) coordinates and directs the office's staff, including the CFO and CIO. Also situated under OMD are human resources and procurement office personnel. The combination of these offices within OMD and the elevated status of the CIO in answering directly to the Managing Director have created an IT-centric focus that greatly benefits the Commission in long-term planning efforts.

*Question.* According to the Office of Personnel Management, 46 percent of the more than 80,000 Federal IT workers are 50 years of age or older, and more than 10 percent are 60 or older. Just 4 percent of the Federal IT workforce is under 30 years of age. Does your agency have such demographic imbalances? How is it addressing them?

*Answer.* The Commission does not consider an applicant's age when making hiring decisions. The FCC also is proud that its working environment encourages loyal staff and excellent retention. During the past year, the FCC has endeavored to hire and retain qualified, skilled staff regardless of their age, including highly respected personnel detailed from other agencies. We believe that we need to maintain a fully staffed IT shop and decrease dependency on IT contractors. Until we receive essential funding, however, we will be unable to fully to meet needed staff levels.

*Question.* How much of the agency's budget goes to Demonstration, Modernization, and Enhancement of IT systems as opposed to supporting existing and ongoing programs and infrastructure? How has this changed in the last 5 years?

*Answer.* The Government Accountability Office has noted that Federal agencies currently spend more than 70 percent of their IT budgets on maintaining legacy systems. The FCC, like other agencies, has been caught in this legacy trap; as of the end of fiscal year 2013, we were trending well above even the Federal average of 70 percent. In fact, the FCC has trended as high as 80 percent for Operations and Maintenance (O&M) and this level actually increased during the past 5 years. Notable exceptions have been new auction system development to support the agency's mission and critical security upgrades.

We have tackled the problem of legacy systems head-on and targeted all available resources toward modernizing our IT systems. But additional funds are necessary in order to make this a reality, however, or risk maintaining high-cost, antiquated and inefficient systems. The FCC's fiscal year 2016 budget requests \$5.8 million to replace the FCC's legacy infrastructure with a managed IT Service provider, as well as one-time infusions of \$9.6 million to rewrite the FCC's legacy applications as part of a modular "shift" to a modern, resilient, cloud-based platform. These new funds will be dedicated to removing the legacy restraints imposed on our budget and allow for spending directed toward more economical and useful resources.

*Question.* What are the 10 highest priority IT investment projects that are under development in your agency? Of these, which ones are being developed using an "agile" or incremental approach, such as delivering working functionality in smaller increments and completing initial deployment to end-users in short, 6-month timeframes?

*Answer.* We have very modest IT investment projects compared to most other agencies and are currently utilizing reprogrammed funds to support a server move. Our fiscal year 2016 budget outlines the remainder of our specific priorities: \$5.8 million to replace the FCC's legacy infrastructure with a managed IT Service provider, as well as one-time infusions of \$9.6 million to rewrite the FCC's legacy applications as part of a modular "shift" to a modern, resilient, cloud-based platform. We also have asked for \$2.2 million to improve the resiliency of the FCC systems, specifically to address gaps identified in our recent FISMA audit process.

At present, the development of a replacement for our ECFS (or "comments") system is an important example of the continued use of agile development. Our move to "O365" is a top-ten priority, but it does not involve development, just moving our Microsoft infrastructure to a true cloud environment. Our highest priority development efforts are mostly centered on incentive auctions and licensing systems. These upgrades are a stop-gap measure until funding is made available for fundamental rewrites of those systems into a true cloud infrastructure, fully utilizing the agile approach.

*Question.* To ensure that steady State investments continue to meet agency needs, OMB has a longstanding policy for agencies to annually review, evaluate, and report on their legacy IT infrastructure through Operational Assessments. What Operational Assessments have you conducted and what were the results?

*Answer.* Yes. We determined last year that we had 207 legacy systems, mostly unsupportable going forward. As a result, we developed a long-term IT modernization plan that is reflected in our fiscal year 2016 budget. Our fiscal year 2016 budget requests \$5.8 million to replace the FCC's legacy infrastructure with a managed IT Service provider, as well as one-time infusions of \$9.6 million to rewrite the FCC's legacy applications as part of a modular "shift" to a modern, resilient, cloud-based platform. A rationalization process for all systems and applications is ongoing as part of our effort to reduce the overall cost and complexity of FCC systems.

*Question.* What are the 10 oldest IT systems or infrastructures in your agency? How old are they? Would it be cost-effective to replace them with newer IT investments?

*Answer.* The FCC has identified the legacy system issue as a core impediment to agency efficiency and a major contributor to overpriced maintenance costs. It would be more cost-effective to replace these systems with newer IT investments and we are moving in this direction. The development of the new Consumer Complaint Database is an example of this work.

I have been advised by our IT staff that examples of our oldest applications include: GenMen, ULS, CDBS, ECFS, ELS, ETFS, EDOCS, EMTS and PAMS. Aging Infrastructure includes: E25K, V490 servers, UPS units in Auctions computer room, Core Routers and the Distribution Switches, as well as our SAN. The age of these applications and infrastructure is broad, but mostly falls into the over 10-year range with some probably approaching 20 years.

It is more cost effective to rewrite the applications into a cloud infrastructure versus replacing the equipment. The initial estimate for just modernizing the applications in the present manner was well over \$22 million, not including upgrading all of the hardware. Our request reflects a 50 percent cost avoidance on the development effort alone without even addressing cost avoidance on the hardware.

*Question.* How does your agency's IT governance process allow for your agency to terminate or "off ramp" IT investments that are critically over budget, over schedule, or failing to meet performance goals? Similarly, how does your agency's IT governance process allow for your agency to replace or "on-ramp" new solutions after terminating a failing IT investment?

*Answer.* We are currently in the process of implementing a long-term modernization effort. We do not have issues and problems related to over-budget, over-schedule, or related issues due in part to a lack of investment in future needs. Our IT governance process, managed through OMD, allows for a fast turn-around through direct contact and discussion with the CFO and Managing Director.

*Question.* What IT projects has your agency decommissioned in the last year? What are your agency's plans to decommission IT projects this year?

*Answer.* We have not decommissioned any IT projects but did replace the Consumer Complaints system. Because of flat funding and not having significant new IT projects funded other than auctions, our entire focus has been on O&M for existing systems. We were compelled to halt improvements and upgrades to the Broadband Map this year due to funding restraints.

*Question.* The newly-enacted Federal Information Technology and Acquisition Reform Act of 2014 (FITARA, Public Law 113-291) directs CIOs to conduct annual reviews of their agency/department's IT portfolio. Please describe your agency/department's efforts to identify and reduce wasteful, low-value or duplicative information technology (IT) investments as part of these portfolio reviews.

*Answer.* In February 2014, the FCC conducted a top-to-bottom review of its internal processes and determined that IT systems at the agency were in serious need of modernization. Since that time, we have been actively engaged in eliminating the 207 legacy systems and creating integrated systems similar to the Consumer Complaint Database.

The CIO's input on the portfolio review is clearly highlighted in our fiscal year 2016 Budget request: \$5.8 million to replace the FCC's legacy infrastructure with a managed IT Service provider, as well as one-time infusions of \$9.6 million to rewrite the FCC's legacy applications as part of a modular "shift" to a modern, resilient, cloud-based platform. We also have asked for \$2.2 million to improve the resiliency of the FCC systems, specifically to address gaps identified in our recent FISMA audit process.

*Question.* In 2011, the Office of Management and Budget (OMB) issued a "Cloud First" policy that required agency Chief Information Officers to implement a cloud-based service whenever there was a secure, reliable, and cost-effective option. How

many of the agency/department's IT investments are cloud-based services (Infrastructure as a Service, Platform as a Service, Software as a Service, etc.)? What percentage of the agency/department's overall IT investments are cloud-based services? How has this changed since 2011?

Answer. The FCC is currently planning to move to cloud-based system. Beyond the move of Microsoft products to O365, which is a full cloud-based deployment, lack of funding will limit our ability to re-write our applications in to a cloud infrastructure. We currently have instantiations of cloud including ZenDesk, Relativity, Mule API Manager, box.com, Google Apps for Government, Amazon Web Services, Applan, and CenturyLink for Web site deployment. We also are planning for several more, including: Azure, SoftLayer, Office365, Incentive Auction, ISAS Bidding system, BPM using ServiceNow and IdaaS using Okta. Please note that these involve only partial deployments in most instances. ZenDesk is a full cloud implementation like O365.

*Question.* Provide short summaries of three recent IT program successes—projects that were delivered on time, within budget, and delivered the promised functionality and benefits to the end user. How does your agency define “success” in IT program management? What “best practices” have emerged and been adopted from these recent IT program successes? What have proven to be the most significant barriers encountered to more common or frequent IT program successes?

Answer. The FCC rolled out the Consumer Complaint Database at about one-sixth of the traditional cost for such a project and it epitomizes many of the agency-wide changes that we hope to implement for IT: inexpensive, off-the-shelf solutions, combined with resiliency, user-friendly options, and the potential to improve our internal data collection methods to increase transparency and inform policy-making decisions.

Unfortunately, lack of funding has undermined additional system development projects. On April 6, 2015, we did sign a contract to move our server off-premises to a secure Federal cluster site in West Virginia. The move to O365 also is a significant project with a fixed price and will be delivered on time and on budget. Further, we plan to develop and deliver the ECFS commenting system in the same timeframe and using the same methodologies as the complaints system. This process will replace the aged system that had difficulty handling four million comments during our recent Open Internet proceeding.

Also, OMD is working hard on improving the searchability, navigability, and appearance of the FCC's external Web site, improvements in search functionality should be seen within the next 2 months, if not earlier. Improving usability and appearance will involve input from FCC.gov stakeholders internally and externally.

As part of this process, we revamped the FOIA page at fcc.gov to make data and filing information more readily available to members of the public. Information on the budget and appropriations for the current fiscal year and the number of total FTEs are available on the Web site. FOIA Annual Report and quarterly reports to DOJ are also available on the Web site. The FCC is a partner in FOIA Online, and once fully implemented, PERM will commence posting FOIA logs and status updates online.

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#### QUESTIONS SUBMITTED BY SENATOR CHRISTOPHER A. COONS

*Question.* The legislation authorizing the incentive auction also created a \$1.75 billion TV Broadcaster Relocation Fund to compensate broadcasters who do not participate in the auction but are nevertheless required to relocate their signal.

Is the FCC confident that the TV Broadcaster Relocation Fund will fully compensate broadcasters for necessary relocation costs resulting from the upcoming incentive auction?

Answer. At this point, we have no reason to believe that the \$1.75 billion Broadcaster Relocation Fund will be insufficient to cover broadcasters' relocation costs. We are taking appropriate measures to disburse funds as fairly and efficiently as possible to ensure the sufficiency of the fund. We have proposed to optimize the final broadcaster channel assignments to minimize relocation costs by: (1) maximizing the number of stations assigned to their pre-auction channels; and (2) avoiding reassignments of stations with high anticipated relocation costs, based on the most accurate information available.

*Question.* In the event that the TV Broadcaster Relocation Fund cannot fully compensate broadcasters, how will the FCC allocate payments from the fund?

Answer. We are taking appropriate measures to disburse funds as fairly and efficiently as possible to ensure the sufficiency of the Reimbursement Fund. If future developments suggest that the \$1.75 billion Reimbursement Fund will be insuffi-

cient to cover all eligible costs, the Commission has delegated authority to the Media Bureau to develop a prioritization scheme for reimbursement claims.

*Question.* The FCC is currently considering a change to its procedures under the effective competition provision of the 1992 Cable Act, which would institute a nationwide rebuttable presumption that there is effective competition for pay television services in every community in America. Critics argue that this move will allow cable companies to insist on carriage agreements that increase rates for customers and reduce the availability of broadcast stations for lower-income Americans.

Are you confident that the rule change will not have a negative impact on consumers and broadcasters?

If the critics are correct, what options does the FCC have to address any harm that does occur, such as reversing the presumption once more or taking other corrective action?

*Answer.* On June 3, 2015, the Commission adopted a Report and Order, Implementation of Section 111 of the STELA Reauthorization Act (MB Docket No. 15-53), which flipped the presumption of Effective Competition. In the more than 20 years since Congress's 1992 instructions, competition in the video marketplace has increased dramatically. Direct broadcast satellite (DBS) providers, like DIRECTV and DISH Network, now have a ubiquitous nationwide presence providing competition in virtually all markets. This is in addition to the competition increasingly being provided by other pay-TV providers. The Commission found, in almost all cases, that Effective Competition did exist and that most cable operators who petitioned the FCC met the statutory test. Where there is Effective Competition, the need for basic service tier rate regulation is diminished.

Last year, the STELA Reauthorization Act further instructed the Commission to make it easier for small cable operators to petition the FCC to determine Effective Competition in their markets. The size of the cable system, however, bears little relationship to whether it has Effective Competition. Thus, it is only appropriate for the Commission to adopt a process that reflects the reality that Effective Competition exists throughout the Nation and provides relief to operators both large and small.

For the last several years, we have been able to watch real-world examples of what happens when cable rate regulation is removed. In the thousands of cable systems subject to Effective Competition, we have a sizable number of real life examples, not hypotheses. Significantly, our most recent report on cable industry prices concludes that the average rate for basic service is lower in communities with a finding of Effective Competition than in those without such a finding. This is not surprising, since competitive choice is the most efficient market regulator. Similarly, there has been no evidence in this proceeding to suggest that our previous findings of Effective Competition in thousands of communities led to any changes in the tier placement of local broadcast stations.

This is our presumption: competition results in lower prices for consumers. However, any local franchising authority is free to come to the FCC and rebut this new presumption for its service area, and, where successful, regulate basic tier cable rates. In addition, nothing in this Order affects other franchising authority responsibilities including the collection of franchise fees, provisions relating to PEG channels and I-Nets, and the creation and enforcement of customer service standards.

Based on the record compiled in this proceeding, I firmly believe that the critics have been and will be proven wrong on this issue. However, in the event that consumers are negatively impacted as a direct result of our action reversing the presumption, the Commission has the breadth of its authority under Title VI of the Communications Act to implement appropriate remedies, including the ability to modify our rules as necessary.

*Question.* The FCC manages a small but very important program that provides telephone relay services so that a deaf person can communicate with a hearing person using the telephone. This critical program allows deaf people to interact with the hearing world, whether it's calling their friends and family, interviewing for a job or ordering a pizza. Like the USF programs, the FCC has an important oversight role to ensure that the program's funds are spent efficiently to meet the needs of the deaf community without overcharging the millions of Americans that pay into the fund.

Can you provide an update on what the FCC is doing to revise this program and its compensation rates?

*Answer.* In 2013, the Commission unanimously adopted an Order and Notice of Proposed Rulemaking (NPRM) to reform the Video Relay Service (VRS) program. In that Order, the Commission sought to enhance the provision of high quality, functionally equivalent service, improve program efficiency, and prevent fraud, abuse, and waste. Among other changes, the Commission adopted measures to achieve



greater interoperability across provider services. The Commission also recognized that for many years, the compensation paid to providers substantially exceeded their actual costs. To correct this problem while avoiding a sudden, potentially harmful drop in provider compensation, the Commission adopted a gradual 4-year schedule for adjusting rates in the direction of cost based levels. In slowly adjusting the compensation rates during the period in which it is implementing structural reforms, the Commission improved the predictability of reimbursements, allowed providers an opportunity to plan effectively for the transition to cost-based rates, and provided a window of opportunity for smaller VRS providers to grow, increase their efficiency, and test the value of their service on a more level playing field. In the NPRM portion of that order, the Commission sought comment on proposals to use auctions and other methods to most appropriately establish cost-based rates.

In a recent filing, the six VRS providers requested the Commission to interrupt the 4-year rate adjustment schedule by temporarily “freezing” VRS compensation rates at the current levels. The providers contend that such a measure is necessary to enable them to maintain service quality and offer certain additional service improvements. The Commission is currently considering a Further Notice of Proposed Rulemaking that asks about the proposal put forth by the six VRS providers, among other options.

*Question.* When do you expect the revised rates to be announced?

*Answer.* The Commission announced the rate schedule for the VRS and other relay services on June 30, 2015.

*Question.* Will currently planned compensation rate reductions lead to a decreased level of VRS service for the deaf?

*Answer.* We do not believe so; however, as indicated above, we are seeking additional information on this question, including whether we should consider a temporary pause in the rate schedule. In any event, we will abide by our statutory mandate to ensure that telecommunications relay services “are available, to the extent possible and in the most efficient manner” to persons in the United States with hearing or speech disabilities.

*Question.* How has the FCC calculated the current compensation rates? How will the FCC calculate the revised rates?

*Answer.* Prior to June 2010, VRS compensation rates were calculated based on projections of cost and demand submitted by providers. In setting compensation rates for the 2010–2011 Fund year, the Commission found that for the prior 4 years, for which rates had been set based on providers’ projected costs, providers had been overcompensated by more than \$2.00 per minute, due to reliance on projected costs and inaccurate demand forecasts submitted by providers. Since that time, the Commission has routinely collected and reviewed providers’ actual (or historical) cost data, which served as a basis for the rate reductions adopted in the 2013 VRS Reform Order.

*Question.* What criteria has the FCC used to determine which costs will be included in the allowable costs for compensation under the current regime? Why does the FCC not include the cost of equipment provided to users? Is the FCC reconsidering which costs will be included in the future, to closer match the actual costs paid by the industry for this service?

*Answer.* The Commission’s list of “allowable” costs is based on the elements needed to make the service available. It has remained constant through most of the existence of VRS and has been factored into the business decisions of providers to enter the VRS market.

Equipment costs have been excluded from the cost basis for VRS rates since 2006. As the Commission then explained, the expenses for which providers are compensated “must be the providers’ expenses in making the service available and not the customer’s costs of receiving the service. Compensable expenses, therefore, do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or necessary software.” Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, Memorandum Opinion and Order, 21 FCC Rcd 8063, 8071, ¶ 17 (2006) (emphasis original).

In this regard, we noted that consumers increasingly access VRS using their own general purpose, off-the-shelf equipment, such as smart phones and tablet computers, rather than dedicated equipment offered by VRS providers. As the court of appeals stated in upholding the Commission’s VRS rate determination, this reliance on off-the-shelf equipment “will make provider-funded video equipment even less relevant to the provision of VRS.” See *Sorenson Communications, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014).

The Commission fine-tuned the list of allowable costs in the 2013 VRS Reform Order. Regarding cost methodology, the NPRM sought comment on possible alter-

natives to setting compensation based on calculation of specific costs—such as by employing auctions or other forms of competitive bidding to set some or all elements of the applicable compensation rate.

*Question. Positive Train Control.*—Please describe the FCC's role in obtaining or helping to obtain spectrum licenses for railroads for implementation of PTC.

Please describe the FCC's role in approving the use of spectrum held by railroads for implementation of PTC, including the pendency of any requests for waivers or technical assistance.

*Answer.* Since my arrival at the FCC in November 2013, I have made facilitating PTC deployment a top priority.

As you know, the Act does not designate specific spectrum bands for PTC, nor does it direct the FCC to allocate specific spectrum for PTC. Absent such direction from Congress—and consistent with decades of successful, market-driven spectrum policy—the FCC encouraged the railroads to turn to secondary markets for spectrum, especially given that much of the spectrum the rails chose for PTC had previously been auctioned and licensed to other private parties in major rail markets. To facilitate this process, I have asked FCC staff to continue engaging with the railroads to develop creative approaches to meet their spectrum needs. These include facilitating an efficient secondary market by matching existing licensees with railroads needing spectrum, encouraging the freight and commuter rails to develop interoperable systems, examining spectrum sharing and lease arrangements, and waiving power level limits to enable PTC systems to operate more effectively.

This strategy has been successful. Whether through secondary market purchases or leases with PTC-220, the freights, Amtrak and the commuter rails have cooperated to find spectrum to meet their needs in most parts of the country. In those areas, like the Northeast Corridor, where additional spectrum is required for PTC purposes, our work in facilitating spectrum is ongoing. For example, we are actively reviewing a proposed exchange of comparable spectrum that would complete spectrum acquisition in the Metropolitan NYC area, fulfilling the MTA's needs, providing spectrum for Amtrak use, and accommodating New Jersey Transit requirements in Northern New Jersey. We continue to assist railroads in their efforts to identify partners for secondary market transactions.

The spectrum between 217 MHz and 222 MHz that has been chosen by the railroads for PTC use comprises three different spectrum bands that were originally auctioned for very different uses. The service rules applicable to those bands have requirements consistent with those original uses. We have waived many of those rules, including technical rules relating to transmit power levels, tower heights, and interference criteria at the request of the railroads to facilitate PTC deployments.

#### SUBCOMMITTEE RECESS

Senator BOOZMAN. The subcommittee hearing is hereby adjourned.

[Whereupon, at 11:49 a.m., Tuesday, May 12, the subcommittee was recessed, to reconvene subject to the call of the Chair.]